

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER 7970

PETITION OF VERMONT GAS SYSTEMS, INC.,
REQUESTING A CERTIFICATE OF PUBLIC GOOD,
PURSUANT TO 30 V.S.A. SECTION 248,
AUTHORIZING THE CONSTRUCTION OF THE "ADDISON
NATURAL GAS PROJECT" CONSISTING OF
APPROXIMATELY 43 MILES OF NEW NATURAL GAS
TRANSMISSION PIPELINE IN CHITTENDEN AND
ADDISON COUNTIES, APPROXIMATELY 5 MILES OF
NEW DISTRIBUTION MAINLINES IN ADDISON
COUNTY, TOGETHER WITH THREE NEW GATE
STATIONS IN WILLISTON, NEW HAVEN AND
MIDDLEBURY, VERMONT --

September 18, 2013
9:30 a.m.

100 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont
Public Service Board, at the Montpelier Room, Capitol
Plaza Hotel, 100 State Street, Montpelier, Vermont, on
September 18, 2013, beginning at 9:30 a.m.

P R E S E N T

BOARD MEMBERS: James Volz, Chairman
David C. Coen
John D. Burke

STAFF: Donald M. Kreis, Staff Attorney
Jay E. Dudley, Utilities Analyst
June E. Tierney, General Counsel
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Peter W. Lind, VELCO

Jane Palmer, Pro Se

Eileen Simollardes, VGS

Don Gilbert, VGS

Marc Teixeira, VGS

Charles Pughe, VGS

Allison Stone, DRM

Jay Kumar, DPS

George Nagle, DPS

David Raphael, DPS

Mike Buscher, VGS

Jeff Nelson, VGS

Jenna Calvi, ANR

Eric Sorenson, ANR

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CHAIRMAN VOLZ: Good morning. We are here this morning in Docket 7690 (sic) which is Vermont Gas's proposal to extend its pipeline into Addison County.

I would like to start by taking notices of appearance starting on my left.

MS. PORTER: Louise Porter and Timothy Duggan for the Department of Public Service. And with us today are Jay Kumar, our economics consultant; George Nagle of our Economics Division; and David Raphael, our aesthetics consultant.

MS. LEVINE: Sandra Levine for Conservation Law Foundation.

MS. DILLON: Judith Dillon with the Vermont Agency of Natural Resources. With me today so far are Jenna Calvi and Eric Sorenson.

MR. COTA: Matt Cota with the Vermont Fuel Dealers Association.

MR. KESSLER: John Kessler, Division for Historic Preservation.

MS. ZAMOS: Diane Zamos on behalf of Vermont Agency of Agriculture, Food and Markets.

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1 MR. DIAMOND: Joshua Diamond on behalf
2 of the Town of Monkton.

3 MR. SCIARROTTA: Mark Sciarrotta on
4 behalf of VELCO, and with me today is Peter
5 Lind, our Senior Project Manager.

6 MS. FLORES: Good morning. Julia Flores
7 with Burak, Anderson & Melloni on behalf of
8 Chittenden Solid Waste District.

9 MR. PALMER: Nathan Palmer, my wife
10 Jane, and Craig Heindel.

11 MS. HAYDEN: Kim Hayden, Downs, Rachlin
12 & Martin on behalf of Vermont Gas Systems,
13 and with me is Eileen Simollardes, of
14 Vermont Gas; Marc Teixeira, Don Gilbert,
15 Charles Pughe, and also with us is Mike
16 Buscher and Jeff Nelson. And I believe
17 Allison Stone is also with us. She is an
18 associate with Downs, Rachlin & Martin.

19 CHAIRMAN VOLZ: Thank you. So my
20 understanding is we are going to go straight
21 to cross examining witnesses. We have a
22 preliminary matter.

23 MR. COEN: Ms. Hayden, we have not seen
24 a few of the pro se parties at this hearing.

25 And Mr. Heintz represented that -- not
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1 definitively -- that things had been settled
2 with Mr. Baldwin.

3 Can you represent that they have been
4 settled or not?

5 MS. HAYDEN: We understand that we
6 reached -- that Vermont Gas has reached an
7 agreement with the Baldwins in principle.
8 The document hasn't been signed.

9 MR. COEN: Okay.

10 MS. HAYDEN: So we don't have an
11 executed -- we don't have -- the option
12 agreement which is the document that would
13 give Vermont Gas the option for the easement
14 if we receive a CPG. That document has not
15 yet been executed by the Baldwins. They
16 reached an agreement in principle either
17 yesterday or the day before, and so my
18 understanding from talking to Mr. Heintz
19 yesterday was that the document is with his
20 lawyer.

21 MR. COEN: Another pro se, Mr. Speroni I
22 believe, a Williston landowner. Do you know
23 anything about the issues, or have you
24 changed the route, removed his issues or
25 anything to that effect?

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1 MS. HAYDEN: Can I just have Ms.
2 Simollardes respond? Are we on the record?

3 MR. COEN: Yes, we are.

4 MS. HAYDEN: Ms. Simollardes will
5 respond to that.

6 MS. SIMOLLARDES: My understanding is
7 the issues with Mr. Speroni have also been
8 resolved, but I don't know that we have an
9 executed agreement with him. I will be glad
10 to reach out to our right of way agents this
11 morning and see if I can get more definitive
12 information for the Board later on today.

13 MR. COEN: That would be good. Thank
14 you.

15 CHAIRMAN VOLZ: Are there any other
16 preliminary matters before we start?

17 (No response.)

18 CHAIRMAN VOLZ: Okay. I understand the
19 first witness this morning is going to be
20 Scott Dillon, so if we want to start.

1 R. SCOTT DILLON

2 Having been duly sworn, testified
3 as follows:

4 MR. COEN: Please state your name for
5 the record.

6 THE WITNESS: My name is Scott Dillon.

7 MR. COEN: Thank you.

8 MR. KESSLER: Thank you.

9 DIRECT EXAMINATION

10 BY MR. KESSLER:

11 Q. Mr. Dillon, could you describe where you work?

12 A. I'm a Survey Archeologist for the Division for
13 Historic Preservation.

14 Q. And could you please describe the document you
15 have in front of you marked as exhibit Division for
16 Historic Preservation Prefiled RSD-1?

17 A. Yes. That's my prefiled testimony concerning
18 this project, concerning the archeological or the historic
19 site issues for this project. It's from June 14, 2013.

20 Q. Thank you. Did you prepare that directly or
21 under supervision of someone else, or was it prepared
22 under your supervision?

23 A. I prepared that.

24 Q. Thank you. For purposes of today, and this
25 Docket, can you say that the testimony in the prefiled
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1 exhibit is true and accurate to the best of your
2 knowledge?

3 A. Yes, it is.

4 Q. Are there any changes that you would like to
5 make to that document?

6 A. No specific changes. I have some commentary.
7 I mean I did address in the testimony somewhat
8 optimistically concerning perhaps supplemental testimony
9 and particularly a conditional letter regarding
10 archeological resources or historic site issues. I think
11 in my testimony I stated that we thought we would have an
12 end of field by the end of June. And we actually received
13 an interim summary report yesterday afternoon. So --

14 Q. So could you describe then the context at this
15 point in time of the archeology work that you understand
16 UVM consulting archeology program is doing, and what would
17 need to be done from this point forward in this CPG
18 process?

19 A. Certainly. As my testimony states, the
20 Division has been involved for a couple of years really in
21 consultation concerning historic resources on the phase
22 one alignment. That includes reviewing and approving
23 scope of work, dealing with archeological assessments of
24 the line, the phase one site identification methodology;
25 the phase two site evaluation methodologies. We also have

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1 been involved in reviewing an addendum to the scope of
2 work that was submitted in October of last year. We have
3 also reviewed December end-of-field report and also for
4 archeological resources and also historic resources review
5 for standing structures also dated December. And that
6 document essentially cleared the alignment for impact to
7 standing structures, historic sites, so all we are really
8 concerned about now is archeological resources.

9 Since that time I've participated in several
10 meetings with UVM, the consultant for VGS, the
11 archeological consultant concerning ongoing work. There
12 has been ongoing archeological work this field season that
13 is summarized in the end-of-field summary or the interim
14 summary that was supplied yesterday. So essentially, that
15 document and -- will be the basis for conditional letter
16 that we would put together concerning the impacts to
17 archeological resources on the line.

18 My understanding that all -- my understanding
19 is that all archeological work on the line that can be
20 completed has been completed at this time. There are a
21 number of areas where access is not permitted so there
22 needs to be some additional work done in those areas.
23 There is about five sites that are known where there is
24 also similar access issues to complete the phase two, the
25 site evaluation of those sites.

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1 Q. And is it fair to say you're satisfied with
2 the work that's been done to date?

3 A. Yes. I mean as I said, the consultation
4 process has been, you know, extremely close. We approved
5 all the methodologies, the -- both for the site
6 identification work and for the phase two. Basically what
7 remains to be done is to -- the policy that VGS generally
8 approaches archeological sites has been a direct avoidance
9 one by directional drilling, the HDD underneath those
10 sites. In some instances there may be value to doing
11 mitigation or data recovery from those areas, and that's
12 still ongoing. That's one of the things I'm going to be
13 discussing with the consultant today, particular
14 mitigation strategies.

15 The conditional letter that we would like to
16 submit as soon as possible based on the report we received
17 yesterday would include conditions dealing with those
18 mitigation and avoidance strategies as well as the general
19 conditions for areas that have not been investigated at
20 this time because of access issues.

21 Q. And is it your expectation that you should be
22 able to work out the ways to avoid adverse impacts on
23 historic sites going forward in that conditional letter?

24 A. Again, as my June 14 testimony states, and you
25 know, I will state again today concerning everything else,
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1 is that as long as the approved methodologies are
2 undertaken, sites are avoided or mitigated, and any future
3 investigation follows those methodologies, this project
4 will have no adverse effect on archeological resources.

5 MR. KESSLER: Thank you. With that Mr.
6 Chair, I would like to move the admission of
7 the Division for Historic Preservation
8 exhibit marked prefiled RSD-1.

9 CHAIRMAN VOLZ: That was his prefiled
10 testimony?

11 MR. KESSLER: Yeah.

12 CHAIRMAN VOLZ: We don't normally mark
13 the testimony as an exhibit. That's bound
14 into the transcript.

15 MR. KESSLER: Sorry.

16 CHAIRMAN VOLZ: Is there any objection
17 to admitting the testimony in this
18 proceeding?

19 MS. HAYDEN: No objection.

20 MS. DILLON: No objection.

21 CHAIRMAN VOLZ: The testimony is
22 admitted.

23 (The Prefiled Testimony of R. Scott
24 Dillon was admitted into the record.)

1 CHAIRMAN VOLZ: I take it there is going
2 to be further filings from you in this
3 matter, is that what you're contemplating?

4 MR. KESSLER: That is what Mr. Dillon is
5 explaining, often the nature of archeology
6 as I know the Board is aware is somewhat
7 fluid after the CPG is issued. And what Mr.
8 Dillon is referring to in terms of a
9 conditional letter be a letter suggesting
10 conditions that are agreed upon by Vermont
11 Gas that if followed there would be no
12 adverse effect. There would be consent to
13 that.

14 CHAIRMAN VOLZ: Okay. And you want us
15 to take -- will you file a brief in this
16 proceeding as to what exactly you'll be
17 asking us to condition any approval on if we
18 do approve this project?

19 MR. KESSLER: I think that would be done
20 I think in agreement with Vermont Gas.
21 Because of Mr. Dillon's working relationship
22 with UVM on this project, I think we would
23 be stipulating to their submission on that
24 as I understand it.

25 CHAIRMAN VOLZ: Okay. Assuming you can
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1 reach agreement.

2 MR. KESSLER: Yes.

3 CHAIRMAN VOLZ: Okay. Thank you.

4 MR. KESSLER: I expect -- all
5 expectations are we will.

6 CHAIRMAN VOLZ: Okay. Thank you. My
7 understanding is nobody else has cross
8 examination for this witness; is that
9 correct? I think we have some questions, or
10 did we get them answered?

11 MR. YOUNG: We got almost all of them
12 answered. And I'm just following up on the
13 Chairman's question.

14 On page five of your testimony in
15 response to question eight, you basically
16 have a conclusion that if certain things are
17 met, and you have a string of about five or
18 six lines there, is that what you would
19 recommend as a condition, you know, the
20 Board basically prescribe that VGS shall do
21 the following.

22 THE WITNESS: Yeah. Generally that
23 string of actions, or I'm not sure how you
24 want to term them, would be covered in the
25 conditions. But the conditions would be
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1 more specific. As of right now there are
2 about 33 known sites in the alignment, 14 of
3 which are significant, meet the criteria for
4 protection; 14 which do not; and five that
5 are pending.

6 So there will be specific conditions
7 dealing with treatment for those known
8 significant sites, either by direct
9 avoidance, by the directional drilling or by
10 data recovery work, mitigation in the
11 project area to recover those.

12 There will also be a set of general
13 conditions dealing with those areas that
14 because of access issues have not been dealt
15 with archeologically yet. And that will
16 follow essentially the same methodologies
17 that have been outlined in Dr. Crock's
18 testimony in this Docket and what the
19 Division has approved in terms of
20 methodologies that meet our guidelines.

21 MR. YOUNG: So along the lines of Mr.
22 Kessler's statement you would expect to have
23 a bunch of additional conditions for the
24 Board to incorporate into a Certificate of
25 Public Good that embody both specific and

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1 general policies.

2 THE WITNESS: That's correct. Yes.

3 MR. YOUNG: Okay. I'm fine. Thank you.

4 CHAIRMAN VOLZ: All right. Good. Thank
5 you. Any follow up or any other questions?

6 MR. BURKE: I have a question.

7 CHAIRMAN VOLZ: Sure.

8 MR. BURKE: Mr. Dillon, just so I
9 understand the process, the more of this
10 route that is undertaken in the existing
11 VELCO right of way, does that actually
12 eliminate the amount of potential problem
13 because you have already done due diligence
14 with regard to potential impacts in the
15 VELCO right of way?

16 THE WITNESS: Let's see, there is
17 various portions of this alignment that have
18 been dealt with by previous archeological
19 work, including, of course, the circ.
20 highway. I know that VELCO has studied some
21 of this alignment, but not as part of an
22 official project in front of our office.

23 Quite a bit of the alignment does follow
24 an area that was addressed in the Champlain
25 Pipeline project back in 1988. So there is
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1 quite a bit of known information around that
2 that did contribute to limiting the amount
3 of archeological work that was undertaken
4 for this project.

5 In other words, there were quite a few
6 areas that had been subject to phase one
7 site identification as part of the Champlain
8 Pipeline work back in 1988. And those areas
9 were not -- you know, that work was not
10 repeated for sections of VGS alignment that
11 is going on here. And that -- and but sites
12 that were identified by that work in 1988
13 were then evaluated. So I mean certainly
14 some work was saved. It was primarily from
15 the Champlain Pipeline work, not so much
16 from work that had been done by VELCO on
17 here. Though for the southern end of this
18 project there was work done in relation to
19 the NRP that did also -- actually do the
20 same thing, you know, provide some
21 additional work that did not have to be
22 repeated.

23 MR. BURKE: Thank you.

24 CHAIRMAN VOLZ: Okay. Any follow up?

25 (No response.)

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1 CHAIRMAN VOLZ: All right. Thank you,
2 Mr. Dillon, you're excused.

3 THE WITNESS: You're welcome.

4 CHAIRMAN VOLZ: My understanding is, Mr.
5 Palmer, that your witness Mr. Heindel has a
6 time constraint and would like to be able to
7 go this morning, and we can do him right now
8 if that works for you. If Mr. Heindel would
9 come up to the witness seat, that would be
10 nice.

11 MR. COEN: Mr. Heindel, welcome back.
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1 CRAIG D. HEINDEL

2 Having been duly sworn, testified
3 as follows:

4 MR. COEN: Please state your name for
5 the record.

6 THE WITNESS: Craig Heindel.

7 MR. COEN: Why don't you spell that for
8 the reporter?

9 THE WITNESS: First name is Craig,
10 C-R-A-I-G. Last name is Heindel, H-E-I-N-D-
11 E-L.

12 MR. COEN: Mr. Palmer.

13 MR. PALMER: This is Craig Heindel and I
14 wish to ask that his prefiled testimony and
15 exhibit --

16 MR. COEN: You're very soft spoken.

17 MR. PALMER: I would request that my
18 witness Craig Heindel's prefiled testimony
19 and exhibit NP-6 be entered into the record.
20 I'm not sure if there is another --

21 CHAIRMAN VOLZ: That's good enough. Is
22 there any objection to the testimony and
23 exhibit of Mr. Heindel being admitted into
24 the record?

25 MS. DILLON: No objection.
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1 MS. HAYDEN: No objection.

2 CHAIRMAN VOLZ: It's admitted.

3 (Exhibit NP-6 was

4 admitted into the record.)

5 (The Prefiled Testimony of Craig Heindel
6 was admitted into the record.)

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1 CHAIRMAN VOLZ: Thank you. My
2 understanding is nobody else has cross
3 examination for this witness; is that
4 correct? I think we have some questions for
5 him.

6 MR. COEN: Let me help out you and Mr.
7 Palmer a minute. Mr. Heindel, would you
8 describe where you work and what you do and
9 that sort of thing? Some of your
10 experience.

11 THE WITNESS: Yes. I'm a consulting
12 hydrogeologist. I work for Waite-Heindel
13 Environmental Management in Burlington. I
14 have been doing consulting hydrogeology;
15 it's the science of groundwater, basically
16 in Vermont for about 30 years. I've
17 testified before state courts, various
18 public hearings, federal court, for numerous
19 cases throughout the years.

20 And Mr. Palmer asked me to look at the
21 potential groundwater impacts of the
22 proposed pipeline through his land.

23 MR. COEN: And you've testified here
24 before as well?

25 THE WITNESS: I have testified. I can't
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1 remember whether that was as an expert
2 witness. I certainly testified before this
3 Board as Chairman of the Ferrisburgh
4 Conservation Commission relating to the
5 Northwest Reliability Project maybe five or
6 eight years ago.

7 MR. COEN: Thank you.

8 CHAIRMAN VOLZ: Okay. Great.

9 MR. YOUNG: Morning, Mr. Heindel.

10 THE WITNESS: Good morning.

11 MR. YOUNG: Let me ask you first, have
12 you read Mr. Heintz's testimony in this
13 case?

14 THE WITNESS: No.

15 MR. YOUNG: So you haven't read his
16 rebuttal testimony?

17 THE WITNESS: No.

18 MR. YOUNG: Well let me just show you an
19 answer that he had to some of the concerns
20 that you had raised, and give you a chance
21 to read that. And then I'll ask you a
22 question or two about it.

23 THE WITNESS: Yes.

24 MR. YOUNG: Okay. And the question he
25 asked himself that he was answering here is
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1 what did the design do to mitigate the
2 concerns that you had expressed. Do you
3 think the design changes that Mr. Heintz
4 explains here address the concerns that you
5 expressed in your testimony?

6 THE WITNESS: These -- so he's speaking
7 of trench breakers or seepage collars is
8 another phrase for it. They are dams of
9 either plastic or steel, or in this case I
10 think they may be talking about bentonite
11 dams that are installed at various intervals
12 along the trench. In some cases those are
13 very effective.

14 In the particular Palmer situation, I'm
15 not sure they will be very effective, and
16 that's because Palmers' land is located at
17 the bottom of a hill. It's in very wet
18 soil. It's clay soils that is saturated for
19 most of the year in quite a shallow depth.
20 So the water is going to be coming at that
21 trench regardless of whether these trench
22 breakers are installed. That water has to
23 go somewhere.

24 The trench breakers, the seepage collars
25 will, if they are effective, will stop the
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1 water, but that water is continuing to come
2 from uphill so it's got to go somewhere.
3 It's likely then to discharge out at the
4 ground surface by these little mini dams
5 that are placed in the utility corridor.

6 So my concern about the effectiveness of
7 the trench breakers is that it may reduce
8 the migration of groundwater along the
9 utility corridor by -- but it would be
10 basically causing that groundwater to
11 discharge out at the ground surface making
12 little seeps, making groundwater discharges
13 at every trench break.

14 And as I say, these can be very
15 effective in some situations. I think they
16 have less likely chance of being effective
17 in the Palmers' particular situation because
18 it is in heavy clay soils. It's at the
19 bottom of a hill. The groundwater will
20 continue to come at that site. The trench
21 breakers will just cause that groundwater to
22 be forced to discharge out of the ground
23 surface making that ground surface wet and
24 not very usable for the kind of agricultural
25 activities that the -- that the Palmers have

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1 and hope to expand.

2 MR. YOUNG: Okay. Just so everyone is
3 aware, I was referring to page 22 of Mr.
4 Heintz's rebuttal testimony was the page I
5 handed the witness.

6 Well on that, are you suggesting there
7 is -- that the pipeline may result in more
8 water coming down hill towards the Palmer
9 property than would otherwise?

10 THE WITNESS: No. It will not change
11 that. It will simply change the flow path
12 of that water. As it reaches the utility
13 trench, that utility trench is going to have
14 an impact on where that water goes.

15 CHAIRMAN VOLZ: If I understood the
16 concern to be that there is ledge there now
17 on Mr. Palmer's property that holds water
18 back from coming on to where he's farming
19 the land that he's farming, and that when
20 they put in the trench they are going to
21 have to blast through some of that rock.

22 And what they are talking about doing is
23 replacing the blasted away rock with some of
24 the bentonite dam so that the water -- so
25 that the water won't flow on to his property
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-- so they will retain the current situation of retaining the water away from his property.

So I'm a little bit confused about what you're saying. What you're saying didn't seem to fit.

MR. PALMER: Could I interject? In the area where the ledge area is is quite a ways north of where this situation is.

CHAIRMAN VOLZ: So this is a different situation from that situation?

MR. PALMER: That's another area.

CHAIRMAN VOLZ: Okay. Thank you.

MR. YOUNG: So is there a distinction -- I mean from the site visit there are two parts of the Palmer property. You have the part where the line's running approximately north-south --

THE WITNESS: Yes.

MR. YOUNG: -- along the stream side, and then it angles a little bit towards the northeast depending on which way you've headed. And it goes up a slope towards what I recall was a berm and then somebody else's property; correct?

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1 THE WITNESS: Correct.

2 MR. YOUNG: Is there a difference in the
3 effectiveness of the trench breaks between
4 whether it's on the sloping part or the part
5 that's more lateral, parallel to the stream
6 and flatter?

7 THE WITNESS: No. I would have the
8 same concerns for both sections of the
9 Palmers' property. That's again because
10 it's low in the regional topography, it's
11 clay soils. The water is shallow.
12 Groundwater will continue to come at this
13 pipeline regardless of whether there are
14 trench breakers or not.

15 And my concern is on either section,
16 either the northwest-southwest oriented or
17 the flat, flatter, north-south oriented
18 section, the groundwater is going to be
19 caused to discharge at the ground surface by
20 the trench breaks.

21 MR. YOUNG: So that water that -- and in
22 both the trench break and the no trench
23 break scenario your basic concern is you're
24 going to have the same amount of water, but
25 the patterns are going to be different and
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1 may make it wetter.

2 THE WITNESS: May make it wetter, yes.

3 CHAIRMAN VOLZ: At the surface.

4 THE WITNESS: Wetter at the surface.

5 And potentially cause -- so cause water to
6 migrate to the low point of the utility
7 trench, wherever that low point spot is on
8 the Palmers' property.

9 For example, at this northwest --
10 northeast end from the north the pipeline
11 first enters the Palmers' property is the
12 highest spot in elevation. At that point
13 the trench could act as a gathering
14 mechanism of groundwater, and allow water to
15 follow that -- the trench backfill to
16 whatever the low point is, which I think is
17 essentially the center of the Palmers'
18 current garden, what you saw there. It
19 seemed like about the low point.

20 MR. YOUNG: And the trench breakers,
21 aren't they intended to basically stop that,
22 but that would create more surface water at
23 that location as opposed to having it follow
24 all the way down?

25 THE WITNESS: Correct. Yes, that's my
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1 conceptual concern. We don't know whether
2 it would happen, but it would not surprise
3 me in this setting.

4 MR. BURKE: So it's your opinion that
5 the breaks might actually make it worse than
6 if there were no breaks at all?

7 THE WITNESS: Yes. That is possible.

8 MR. YOUNG: So but overall, since we
9 started off with the premise that you're not
10 assuming that the pipeline is going to
11 result in more water flow, you're simply
12 talking about a change in the water flow
13 that has the potential for disrupting some
14 of the current uses of the farm land.

15 THE WITNESS: Yes.

16 MR. YOUNG: And what we don't know is
17 where that's going to be or how much
18 disruption may occur.

19 THE WITNESS: Correct.

20 MR. YOUNG: One thing that was mentioned
21 as a possibility by Vermont Gas is the idea
22 of doing a horizontal directional drill,
23 essentially boring underneath the Palmer
24 property for a portion of this distance at a
25 depth of somewhere between 10, you know, 10
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1 feet or plus. I think we referred to
2 numbers between 10 and 15 feet.

3 Would that address your concerns?

4 THE WITNESS: That would be tremendous
5 improvement. And I think if it were
6 horizontally drilled from where it enters
7 the Palmer property at the north boundary to
8 where it exits the Palmer property at Rotax
9 Road, and if it were horizontally drilled 10
10 to 15 feet below ground surface, it would
11 essentially eliminate my concerns about the
12 alteration of water migration on the
13 Palmer's property.

14 MR. YOUNG: Now what if it were not --
15 and again, this is a concept, so we have no
16 particular evidence on where this may occur,
17 but what if it were not on the entire route
18 through the Palmer property. Hypothetically
19 say it's on the north-south part as opposed
20 to the part that's running uphill and to the
21 northeast. And I'll say affirmatively I
22 have no idea whether that's correct.

23 How do you view that impact?

24 THE WITNESS: That would mitigate that
25 section, whatever section is underground,
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1 would mitigate to a great degree my water
2 concerns. If the northern portion of the
3 pipeline on the Palmers' property that is
4 the part that's oriented northeast-southwest
5 is not undergrounded, then that's going to
6 act, I think, as a collector of water, and
7 at the low spot of where the trench converts
8 to an undergrounded drilling situation,
9 there will be water that has to be dealt
10 with somewhere.

11 MR. COEN: Just for clarification, both
12 options are going to be underground.

13 THE WITNESS: Yes. Oh, yes. I
14 understand that. One's a relatively shallow
15 trench, and the other is a deeper horizontal
16 bore.

17 MR. COEN: Right.

18 MR. YOUNG: And let me -- again I'm
19 talking without knowledge of exactly what
20 the potential proposal may be. But if you
21 had that northeastern part, the sloping part
22 of the line at -- essentially trenched at
23 four feet or something, is there something
24 that one could do assuming you get the
25 channelization that you're concerned about,
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1 which is getting more water basically in the
2 soil with different compaction.

3 THE WITNESS: Yes.

4 MR. YOUNG: Is there something one could
5 do at the lower end of that to help
6 encourage that water to essentially run off
7 into the stream farther down and therefore
8 mitigate that concern?

9 THE WITNESS: I would think it would be
10 possible to design both a subsurface and a
11 shallow surface diversion that would carry
12 -- that would pick up any collected
13 groundwater at that low spot and divert it
14 into the wetland to the west. Whether that
15 diversion would be allowable by wetland
16 rules, I don't know. But from a hydrologic
17 point of view if the topography works
18 properly, and again there I mean that the
19 low spot of that groundwater collection
20 point would have to be higher than the
21 discharge point so it flows by gravity.
22 Certainly don't want to have a little pump
23 -- pumping situation there.

24 So it needs to have the proper
25 topography so that this drainage spot could
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1 passively act as a drain by gravity flow.
2 And it may be possible for it, depending on
3 where they choose the spot that the pipeline
4 converts to a horizontal drill, it may be
5 possible to drain at that spot and drain it
6 into a location that perhaps Mr. Palmer
7 might find would not be unacceptable to him.
8 I mean maybe even off his property into that
9 wetland to the west.

10 MR. YOUNG: And you would recommend that
11 if VGS is permitted to build this, and that
12 part is not bored, that they do consider
13 doing that type of mitigation?

14 THE WITNESS: I would recommend that.
15 Yes.

16 MR. YOUNG: I have no further questions.
17 Thank you very much.

18 MR. BURKE: If there was diversion, the
19 diversion really occurs, and the concern
20 that you have is primarily because you have
21 heavy clay soil that doesn't permeate well
22 and actually tends to channel water rather
23 than take it in, isn't that correct?

24 THE WITNESS: Not only heavy soils but
25 shallow saturation -- shallow groundwater.
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1 Yes.

2 MR. BURKE: And so if you do accomplish
3 some diversion, that diversion is likely to
4 have the same issues that increase the
5 impacts of water in the wetland and sit in
6 that wetland, raising the level of water in
7 the wetlands, won't it?

8 THE WITNESS: I wouldn't expect it to
9 raise the water level in the wetlands.
10 Relatively small amount of water probably.
11 And it's a large enough amount of water to
12 impact an agricultural operation, a
13 commercial truck garden, but probably
14 wouldn't impact this quite large wetland.

15 MR. BURKE: So in your opinion the
16 greater good would be that there would be
17 little impact on the wetlands, and a great
18 benefit for the agricultural use of the
19 property that we are talking about here.

20 THE WITNESS: I agree. Yes.

21 MR. BURKE: Thank you.

22 MR. COEN: This is something completely
23 different. Your expertise is in hydrology.
24 Is it also in soils?

25 THE WITNESS: I have some expertise in
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1 soils and its interactions with water. Not
2 with fertility of soil, for example. But --

3 MR. COEN: Or one of the questions that
4 we have been trying to grapple with was the
5 impact of the pipeline on certification of a
6 farm as organic.

7 Do you have any history in investigating
8 any of that?

9 THE WITNESS: No, I do not.

10 MR. COEN: Thank you.

11 CHAIRMAN VOLZ: Any follow-up questions
12 to our questions? Yes.

13 MR. PALMER: I have a couple.

14 CHAIRMAN VOLZ: You'll get a chance to
15 redirect at the end when everybody else is
16 done.

17 MS. HAYDEN: I have just one question.

18 CROSS EXAMINATION

19 BY MS. HAYDEN:

20 Q. Hi.

21 A. Hi.

22 Q. The mitigation that you were referring to, are
23 you referencing, for example, drainage tiles being
24 installed, subsurface drainage tiles?

25 A. No.

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1 Q. Okay. You're talking about designing -- maybe
2 you can explain it again then.

3 A. Well at the low point of the pipeline, it
4 would be appropriate to design both a groundwater relief
5 system, trench system, so you could consider that as like
6 a drainage tile, but only -- you only need one drainage
7 pipe. Usually when you say drainage tiles, you're talking
8 about a series of them all across an agricultural field.

9 I'm suggesting that at the low point of the
10 pipeline on the Palmers' property that where water is
11 inevitably going to collect, I believe, that that should
12 be drained both by subsurface -- relatively shallow
13 subsurface groundwater drainage system, and while you're
14 doing that, right on top of it could be a shallow surface
15 water drainage swale, so that both surface water and
16 shallow groundwater can be diverted away into the wetland
17 and away from the agricultural operations of the Palmers.

18 Q. Okay, that's helpful. And my understanding of
19 a drainage tile is it's a pipe with holes in it
20 essentially?

21 A. Yes. This would not be that. This is -- the
22 purpose of this is to channel and divert water away from a
23 spot. So it would not be perforated. It would be solid.

24 Q. Okay.

25 MS. HAYDEN: I have no other questions.
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CHAIRMAN VOLZ: Thanks. Any other
follow up before we go to redirect by Mr.
Palmer?

Okay, Mr. Palmer.

REDIRECT EXAMINATION

BY MR. PALMER:

Q. Yes. On the flow of the water basically you
did observe that the water flows north through the marsh?

A. Yes.

Q. And this will actually be causing the water to
flow south across our field. Will that be a bit of a
conflict for the water to be changing direction like that?

A. Well I would say no. I mean -- the
groundwater coming from the east of your property is
flowing to the west into the wetland at various locations.
And the drainage aspects of the pipeline that we have been
talking about would have that water enter at slightly
different locations in the wetland. But the wetland is a
large enough complex with enough sort of hydrologic
balancing all by itself that I don't think it's going to
have a significant impact on the wetland.

Q. But as far as the garden area itself, it would
be directing more water into that area?

A. It would be without the -- some of the
hydrologic measures that I have suggested, yes.

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1 Q. And we do have the issue that Norma Norris's
2 property is all tile. Is there a possibility that that
3 trench when it does come across by the hedgerow could pick
4 up extra water there and send it down through this trench?

5 A. I think it would be picking up -- any water in
6 the subsurface that is now aiming toward the west, whether
7 it's in -- traveling in the soil, or in the drainage
8 pipes, agricultural drainage pipes on that property, that
9 water is going to be intercepted by the trench.

10 Q. So actually the horizontal bore the best thing
11 would be to start on Norma's property and then shoot it
12 right straight across Rotax Road?

13 A. Absolutely. That would provide the least
14 impact to your property. Yes.

15 Q. Thank you.

16 CHAIRMAN VOLZ: Okay. Thank you.

17 THE WITNESS: Thank you for taking me
18 early. I appreciate that.

19 CHAIRMAN VOLZ: No problem. Thank you,
20 Mr. Heindel. You're excused.

21 I think we are ready for Mr. Nelson
22 next.

JEFFREY A. NELSON

Having been duly sworn, testified
as follows:

MR. COEN: Will you state your name for
the record?

THE WITNESS: Jeff Nelson. I'm employed
by VHB as Director of Energy and
Environmental Services in our North
Ferrisburgh office.

MR. COEN: Thank you.

DIRECT EXAMINATION

BY MS. HAYDEN:

Q. Good morning, Mr. Nelson. Can you please --
you just stated where you're employed.

Do you have in front of you prefiled testimony
of Jeffrey Nelson dated December 20, 2012 consisting of 43
pages together with a cover page and a table of contents?

A. Yes, I do.

Q. And was that document prepared by you or under
your direct supervision?

A. Yes, it was.

Q. Is it true and accurate to the best of your
knowledge and belief?

A. Yes, it is.

Q. Are there any corrections to that testimony?
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1 A. No. There are none.

2 Q. And your table of contents identifies 13
3 exhibits; exhibit Petitioner JAN-1 through JAN-13. Are
4 you offering all 13 exhibits today?

5 A. Some of these have been updated so I believe
6 only a subset of those is being offered as I recall.

7 MS. HAYDEN: And because Mr. Nelson --
8 as with Mr. Heintz, Chairman Volz, Mr.
9 Nelson's exhibits were modified as the
10 project was modified. There were some
11 exhibits that were created in February for
12 the reroutes, and then again updated for
13 June. And it just might be helpful if I
14 read into the record the names of each of
15 those documents that we are offering with
16 the December testimony, the February
17 testimony, and then the July testimony, just
18 so that it's very clear for the record which
19 documents have been essentially superseded.

20 CHAIRMAN VOLZ: Okay. So you're going
21 to be -- are you eventually admitting all of
22 the exhibits, or you're not admitting all of
23 them, only some of them?

24 MS. HAYDEN: Some of the February
25 exhibits.

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1 CHAIRMAN VOLZ: You'll be reading the
2 ones that you are admitting?

3 MS. HAYDEN: Yes. For example, the
4 exhibit list for the December filing lists
5 13 exhibits. We are only offering the first
6 nine. The other remaining exhibits are
7 superseded. And so we are not offering
8 those into the record. And I just want to
9 make it clear because the exhibit list lists
10 them.

11 CHAIRMAN VOLZ: Right.

12 MS. HAYDEN: And the testimony will be
13 going into the record because it has an
14 exhibit list. His is a little bit more
15 confusing than Mr. Heintz's, so I wanted the
16 record to be pretty clear.

17 CHAIRMAN VOLZ: Go ahead.

18 BY MS. HAYDEN:

19 Q. Mr. Nelson, please turn to the exhibit list
20 for your December testimony.

21 A. Okay.

22 Q. Your resume is listed as JAN-1. That exhibit
23 has not been modified; correct?

24 A. That's correct.

25 Q. And exhibit JAN-2?

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1 CHAIRMAN VOLZ: Is there some easier way
2 to do this, like ask him which ones he's
3 changed and -- it would have been helpful if
4 you had prepared a new exhibit list and just
5 had the ones --

6 MS. HAYDEN: We do have a new exhibit
7 list we provided to the Board.

8 CHAIRMAN VOLZ: Why don't you just put
9 that into evidence, and then admit the
10 exhibits that go along with that list and
11 leave it at that?

12 MS. HAYDEN: Sure. And we provided
13 that, and I can give the Board and others a
14 copy of that. We have an updated exhibit
15 list for all evidence including Mr.
16 Nelson's. It's on page 6 of that list.

17 We brought these the first day and
18 handed them out to all the parties. I don't
19 know if anybody else needs a copy of our
20 evidence list.

21 MS. LEVINE: If I -- I think it would be
22 helpful to have some of the original
23 exhibits in. For example, JAN-2. And not
24 just supplemental that was prefiled later.

25 MS. DILLON: I guess I would join in
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1 that. Just because there has been some
2 testimony regarding some potential
3 proposals, proposed alternate routes, and it
4 might be helpful for the Board to have
5 before it any Natural Resource information
6 on those potential routes. And I think some
7 of that is in the December 2012 filing in
8 the Natural Resources' report.

9 And all of the parties already have a
10 copy of that. So --

11 MS. HAYDEN: The Natural Resources'
12 report which is JAN-2 is -- the February
13 version of that contains everything that was
14 in the original Natural Resources' report
15 from December.

16 MS. DILLON: It's slightly different.
17 There are some -- there is some information
18 in the December report that's not in the
19 February report. And that might be helpful
20 to the Board.

21 And frankly, all of the parties have a
22 copy of it. I'm not seeing -- I don't
23 appreciate the harm as long as there is no
24 confusion for the parties.

25 CHAIRMAN VOLZ: Why can't we admit all
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1 of the exhibits, and you can make clear in
2 your briefs which ones you're relying on for
3 your case, and other people can rely on the
4 other ones to make whatever points they want
5 to make.

6 MS. HAYDEN: Okay. We can certainly do
7 that. Would you like us to admit those
8 exhibits which have been superseded? His
9 testimony does explain -- his direct
10 testimony, the February testimony and the
11 June testimony, which exhibits have been
12 updated. And so we could offer everything
13 into the record.

14 CHAIRMAN VOLZ: If the testimony makes
15 clear which exhibits are superseded, and
16 you're saying that it does, then why don't
17 we just admit all the testimony and all the
18 exhibits.

19 MS. HAYDEN: Okay. We will do that. We
20 will have to supplement what we are handing
21 to the Board today because it's a much --
22 it's about three feet tall.

23 CHAIRMAN VOLZ: We have all of them
24 anyway. For the official record we would
25 like you to do that.

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1 MS. HAYDEN: That's fine.

2 MS. TIERNEY: Are the supplemented
3 documents identified differently from the
4 ones that were originally filed?

5 MS. HAYDEN: They are. Each of the
6 supplements from February and June identify
7 them -- including with the date, so that the
8 February versions are dated 2/28 and the
9 June versions are dated 6/28.

10 MS. TIERNEY: So there is a clear way to
11 distinguish when you're citing them in your
12 briefs and the like.

13 MS. HAYDEN: Exactly.

14 CHAIRMAN VOLZ: Is there any objection
15 -- do you have any corrections to your
16 testimony?

17 THE WITNESS: I do.

18 MS. HAYDEN: But not to your December
19 testimony.

20 THE WITNESS: Not to the December
21 testimony.

22 BY MS. HAYDEN:

23 Q. All right. Let's move to your February
24 testimony. Do you have that with you?

25 A. I do.
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1 Q. And that's entitled February 28, 2013
2 Supplemental Prefiled Testimony of Jeffrey Nelson
3 consisting of 54 pages, together with a cover page, a
4 table of contents.

5 A. That's correct.

6 Q. Was that prepared by you or under your direct
7 supervision?

8 A. Yes, it was.

9 Q. And is it true and accurate -- do you have any
10 corrections to make to that testimony?

11 A. I have two corrections.

12 Q. Okay.

13 A. So on page 12 of 54 first line of that page
14 says; use of temporary mats to cross wetlands and buffers
15 thereby minimizing impact within those areas. The words
16 and buffers should be deleted. They are inconsistent with
17 what I've stated elsewhere and what we have presented in
18 the collateral permit application. So those two words
19 need to be deleted from that statement.

20 Q. Just for clarification what you're stating is
21 that temporary mats will not be placed in wetland buffers?

22 A. That's correct. Yeah. And there was one
23 other correction which is on page 23 of 54. There is a
24 footnote on that page, footnote three that speaks to the
25 projects under Section 248 jurisdiction being exempt from

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jurisdiction under stream alteration. And that's actually no longer correct. The current stream alteration general permit that's been adopted by ANR since February does require permitting Section 248 projects.

So this footnote should be removed.

Q. Okay. And if you can turn back to the cover page with your February testimony. You introduced exhibit Petitioners Supp. JAN-2 with a date of 2/28/13. Exhibit Petitioners Supp. JAN-3, JAN-4, JAN-7, JAN-8, JAN-9, JAN-10, JAN-11 and JAN-13 all with a February 28, '13 revision date; is that correct?

A. Yes, that's correct.

Q. And were those prepared by you or under your direct supervision?

A. Yes, they were.

Q. And those are true and accurate to the best of your knowledge and belief?

A. That's correct.

Q. Okay. Turning to your June testimony.

A. Okay.

Q. Do you have in front of you a document entitled Supplemental and Rebuttal Testimony of Jeffrey Nelson dated June 28, 2013 consisting of 30 pages together with a cover page and table of contents?

A. Yes, I do.

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1 Q. And was that document prepared by you or under
2 your direct supervision?

3 A. Yes, it was.

4 Q. Are there any corrections to that document?

5 A. No, there are not.

6 Q. It's true and accurate to the best of your
7 knowledge and belief?

8 A. That's correct.

9 Q. And if you turn to your exhibit list on the
10 table of contents you've identified as exhibits that were
11 included with that testimony exhibit Petitioner's Supp.
12 JAN-2 dated 6/28/13. Is that a supplement to the February
13 exhibit Petitioner's Supp. JAN-2?

14 A. Yes. That's the supplemental Natural
15 Resources information.

16 Q. Okay. And you also list exhibit Petitioner's
17 Supp. JAN-4, JAN-7, JAN-8, JAN-9, JAN-13 also dated June
18 28, 2013. And is it also true that those were updates to
19 the February version of those -- either the February or
20 the December version of those exhibits?

21 A. Yes. That's correct.

22 Q. And you explained that in your testimony?

23 A. I do.

24 Q. Okay. You also list several rebuttal
25 exhibits, exhibit Petitioner Rebuttal JAN-1 through 4.

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1 Were those prepared by you or under your direct
2 supervision?

3 A. Yes, they were.

4 Q. Are they true and accurate to the best of your
5 knowledge and belief?

6 A. Yes.

7 Q. Are there any revisions to those documents?

8 A. No, there are not.

9 Q. And Mr. Nelson, do you have with you a copy of
10 the exhibit Petitioner VGS-ANR what's been identified as
11 ANR-Joint-1?

12 A. Yes, I do.

13 Q. And were you involved in the negotiation of
14 that MOU?

15 A. Yes, I was.

16 Q. This is an MOU or a Memorandum of
17 Understanding between Vermont Gas and the Vermont Agency
18 of Natural Resources; is that correct?

19 A. That's correct.

20 Q. This document has two appendices or
21 attachments. Attachment one is identified as the
22 Vegetation Management Plan; is that correct?

23 A. Yes. That's correct.

24 Q. And was that -- exhibit Petitioner Rebuttal
25 JAN-1 which was filed on June 28 was also a version of the
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1 Vegetation Management Plan. Do you recall that?

2 A. Yes, I do.

3 Q. And we have just identified it for the Board
4 and it will be entered into the record. But can you
5 clarify what revisions -- just briefly clarify what
6 revisions have been made to the Vegetation Management Plan
7 that is now attached to the Memorandum of Understanding
8 with the Agency of Natural Resources?

9 A. Sure. The version that's attached to the MOU
10 is dated September 16. And that incorporates a number of
11 additional special vegetation management techniques and
12 locations that were agreed upon with ANR through the
13 course of the negotiation of the MOU that were above and
14 beyond the special management techniques that were
15 included in the June 28 version of the plan.

16 Q. Okay. And I think you provided the date was
17 September 16, 2013 is the revision date to that Vegetation
18 Management Plan; is that correct?

19 A. Yes.

20 Q. And can you just identify for the Board what
21 is also attached as Attachment 2 to the MOU?

22 A. Sure. Attachment 2 to the MOU is titled
23 Addison Natural Gas Project Phase One Best Management
24 Practices for Blasting to Avoid Environmental
25 Contamination. And that's dated September 13, 2013.

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1 Q. Okay. And were Attachment one and two to the
2 Memorandum of Understanding -- let me just speak to
3 Attachment one. Was Attachment one the revised Vegetation
4 Management Plan prepared by you or under your direct
5 supervision?

6 A. Yes, that's correct.

7 Q. Is it true and accurate to the best of your
8 knowledge and belief?

9 A. Well I do have one correction.

10 Q. Okay.

11 A. So in Appendix 2 to Attachment one, Appendix 2
12 of the Vegetation Management Plan, there is a table, and
13 that table is basically a listing of all the special
14 vegetation management types. And in the third row of the
15 table is vegetation management treatment type B2. And --

16 CHAIRMAN VOLZ: B as in boy?

17 THE WITNESS: B as in boy. And the --

18 MS. DILLON: Excuse me, Jeff. Maybe
19 just slow down.

20 MS. LEVINE: I have no idea where you
21 are.

22 THE WITNESS: Sorry.

23 MS. LEVINE: And I'm really trying very
24 hard to follow along.

25 THE WITNESS: Let me back up. So
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1 Attachment one to the MOU is the Vegetation
2 Management Plan. And that begins with a
3 narrative that is 26 pages.

4 MS. LEVINE: Okay.

5 THE WITNESS: And then after that is
6 Appendix 1 which is a series of 11 by 17 map
7 sheets that I'm not sure exactly how many
8 pages there are, but it's about an inch
9 thick.

10 MS. LEVINE: Got that.

11 THE WITNESS: Then beyond that is a
12 green page labeled Appendix 2, and after
13 that page is a one-page sheet that is a
14 spreadsheet that is a summary of the
15 vegetation management treatment, and that's
16 what I'm talking about.

17 MS. LEVINE: Thank you.

18 THE WITNESS: So in that spreadsheet the
19 third row down vegetation management
20 treatment type B, as in boy, 2. There is a
21 typo. And that typo is in the final or the
22 column furthest to the right, there is a
23 less than sign that should be a greater than
24 sign. So should I just read that sentence?

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1 integrity will be selectively removed in the
2 Pine, Oak, Heath, Sandplain Forest, no tree
3 cutting where the HDD is currently, it says
4 less than 15 feet. The correction would be
5 to change that to a greater than sign. So
6 greater than 15 feet deep, and for a
7 distance of no more than 100 feet from HDD
8 ends.

9 And with that correction the table will
10 be consistent with the text of the
11 Vegetation Management Plan that precedes it.

12 CHAIRMAN VOLZ: So that document was
13 part of an MOU with ANR?

14 MS. HAYDEN: It was.

15 CHAIRMAN VOLZ: And so does ANR agree
16 with that change?

17 MS. DILLON: Yes.

18 CHAIRMAN VOLZ: Okay. Thank you.

19 MS. HAYDEN: I think ANR pointed out
20 that change to us.

21 THE WITNESS: They did.

22 MS. HAYDEN: And we were planning to
23 introduce this on Monday, and Attachment 2
24 had not been completed at that time.

25 With that correction, I would move to
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1 admit the December 20 prefiled testimony of
2 Mr. Nelson together with all of his December
3 20 exhibits, the February 28 and the June 28
4 supplemental and rebuttal testimony of Mr.
5 Nelson together with all of the exhibits
6 identified therein, as well as the -- what's
7 been marked as exhibit Petitioner VGS-ANR
8 Joint 1.

9 CHAIRMAN VOLZ: Any objection?

10 MS. LEVINE: I have one question.

11 CHAIRMAN VOLZ: Sure.

12 MS. LEVINE: Reference was made to
13 Attachment 2 which is the Best Management
14 Practices for Blasting to Avoid
15 Environmental Contamination. And I believe
16 the reference was that this was dated
17 September 13, 2013.

18 I have a copy that was given to me dated
19 September 11. I just want to confirm it's
20 the same document.

21 THE WITNESS: It should be. If I stated
22 September 13 I was incorrect. It's dated
23 September 11.

24 MS. LEVINE: Okay. Thank you very much.

25 MS. HAYDEN: Just a clarification. I'm
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1 noting that there is a revision date at the
2 bottom of the document on page 1. So it
3 carries the date of September 11. But it
4 appears that -- no, that's correct. It was
5 September 11. That's the final version.

6 CHAIRMAN VOLZ: Okay. So any objection
7 to admitting the testimony and exhibits that
8 were just identified?

9 MS. DILLON: No objection.

10 CHAIRMAN VOLZ: They are admitted.

11 (Exhibits marked Petitioner JAN-1
12 through JAN-13; 2/28/13 Supp. JAN-2 through
13 Supp. JAN-4, Supp. JAN-7 through Supp.
14 JAN-11 and Supp. JAN-13; 6/28/13 Supp.
15 JAN-2, Supp. JAN-4, Supp. JAN-7 through
16 Supp. JAN-9, Supp. JAN-13; Rebuttal JAN-1
17 through Rebuttal JAN-4, and VGS-ANR-Joint-1
18 were admitted into the record.)

19 (The Prefiled Testimony of Jeffrey A.
20 Nelson was admitted into the record.)

1 MS. HAYDEN: The witness is free to be
2 crossed.

3 CHAIRMAN VOLZ: Ms. Levine, you signed
4 up for cross.

5 MS. LEVINE: Yes. Thank you.

6 CROSS EXAMINATION

7 BY MS. LEVINE:

8 Q. Good morning, Mr. Nelson.

9 A. Good morning.

10 Q. I just want to review some of the additional
11 permits and requirements regarding the natural resources
12 that will be affected by this project. The project still
13 requires a permit from the Army Corp. of Engineers; is
14 that correct?

15 A. Yes, it does.

16 Q. And it still requires a Clean Water Act 401
17 Water Quality Certification; correct?

18 A. Yes, it does.

19 Q. And those permits they have not been received
20 yet.

21 A. They have been applied for.

22 Q. And those permits concern work in or impacts
23 to wetlands and water quality; correct?

24 A. Work in wetlands or other waters of the U.S.,
25 and certainly 401 addresses compliance with Vermont's

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1 Water Quality Standards.

2 Q. And the modifications that you've provided as
3 part of the agreement with the Agency of Natural Resources
4 did not affect in any way the need to get any of these
5 permits, obtain any of these permits?

6 A. That's correct. The jurisdictional trigger is
7 not altered by virtue of the modifications that are
8 included in the MOU.

9 Q. Now in your JAN-13 which is -- you can look at
10 any version of that that you want. It's the same -- I'm
11 particularly referring to page seven of that.

12 A. Okay. I'll go to the June 28 version.

13 Q. And just to be clear that's the alternative
14 analysis for Section 404?

15 A. That's correct.

16 Q. And page seven you identify that in order to
17 minimize impacts you would look for opportunities to
18 collocate the project with existing facilities; is that
19 correct?

20 A. Yes. That's correct.

21 Q. And you would agree that collocation where you
22 use already disturbed lands is a means to reduce natural
23 resource impacts; is that correct?

24 A. As a general premise, yes. But I would
25 qualify it to say that when we get to the level of micro

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1 siting, if you will, that other constraints also need to
2 be evaluated.

3 Q. And the Environmental Protection Agency has a
4 role separate from the role of the Army Corp. of Engineers
5 in reviewing, for instance, the 404 permit; is that
6 correct?

7 A. I guess -- I'm not entirely clear on the
8 question. Could you ask -- perhaps rephrase it?

9 Q. That the Environmental Protection Agency has a
10 role separate from the role of the Army Corp. of Engineers
11 regarding review of Section 404 permits?

12 A. Yes. The EPA is a consulting or advisory
13 agency to the Corp. as the Corp. considers a 404 permit
14 application.

15 Q. And the Environmental Protection Agency has
16 not indicated any approval of the proposed project to
17 date?

18 A. I'm not aware that the Corp. -- that EPA has
19 issued any, I don't know if I would use the word approval,
20 but any statement with respect to the project.

21 Q. And turning now to VGS-ANR Joint 1 that's the
22 Memorandum of Understanding and the attachments.

23 A. Okay.

24 Q. Page nine of the Memorandum of Understanding
25 identifies the natural resources HDD segments. Do you see

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1 that?

2 A. This identifies some additional HDD segments.

3 Q. And am I correct that these are only river
4 crossings, there is no HDD proposed for avoidance of
5 wetlands?

6 A. In this particular list, that's correct. But
7 this is not a complete list of the HDD segments that are
8 associated with the project.

9 Q. Where can I find a complete list of the HDD
10 segments?

11 A. That would be exhibit JH-15, the John Heintz
12 exhibit that was part of the 6/28 testimony, which I
13 believe has been updated to reflect the two changed or
14 added HDDs that come about as a result of the ANR MOU.

15 Q. Regarding the additional segments that -- for
16 which HDD would be used, none of those are wetlands; is
17 that correct? They are stream crossings?

18 A. Well actually which additional -- the ones
19 that are in paragraph 18 of the MOU?

20 Q. Paragraph 18 of the MOU. Yes.

21 A. Those are stream or river crossings, but again
22 it's not a complete list of the HDD areas that are
23 intended to avoid natural resource impacts.

24 MS. LEVINE: That's all I have. Thanks.

25 CHAIRMAN VOLZ: Ms. Dillon, do you have
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1 questions for this witness?

2 MS. DILLON: I had just a quick follow
3 up to Ms. Levine's questioning.

4 CROSS EXAMINATION

5 BY MS. DILLON:

6 Q. Regarding the MOU and additional horizontal
7 directional drilling segments, is there a proposed -- or
8 did the MOU obligate Vermont Gas to use the horizontal
9 directional drilling under the Northern White Cedar Swamp?

10 A. There are multiple Northern White Cedar
11 Swamps, but I guess there is a segment of HDD that's been
12 added in the Town of New Haven that crosses a Northern
13 White Cedar Swamp as well as the Little Otter Creek. This
14 is an area that the Board viewed during the site visit
15 when we stopped at Plank Road and looked to the north.
16 And I believe either I or Eric pointed out at that site
17 visit the location of Little Otter Creek.

18 That was a location that was not current --
19 not at that point proposed for HDD, but as a result of the
20 MOU, that entire segment to include a Wet Clayplain
21 Forest, a Northern White Cedar Swamp, Little Otter Creek,
22 and Plank Road will all be directionally drilled.

23 Q. So does that avoid the wetland -- the HDD in
24 that location?

25 A. Two wetlands. It's one wetland complex. It's
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1 the Northern White Cedar Swamp and Wet Clayplain Forest at
2 that location are avoided by virtue of that new HDD.

3 Q. And is it your understanding that Vermont Gas
4 requests that the commitments contained in the MOU be
5 incorporated into any Certificate of Public Good issued
6 for this project?

7 A. I presume so. I don't know that I'm
8 authorized to speak on behalf of the company in that
9 instance, but that's certainly my understanding.

10 Q. And is it your understanding that Vermont Gas
11 agrees to request the Board to incorporate any obligations
12 of the Vegetation Management Plan into any Certificate of
13 Public Good issued for this project?

14 A. Yes. That is my understanding.

15 Q. Okay. Mr. Nelson, with respect to the MOU and
16 the Vegetation Management Plan, I understand that the
17 Vegetation Management Plan provides specific details
18 regarding how Vermont Gas will conduct its management of
19 the project during the operational phase; is that correct?

20 A. That's a fair statement. Yes.

21 Q. And the MOU basically introduces that
22 obligation.

23 A. Yes.

24 Q. But where there are specifics contained in the
25 Vegetation Management Plan, would you agree that any of

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1 the specifics in the Vegetation Management Plan should
2 control the actual operation -- management during the
3 operational phase?

4 A. Yes, and if I may, the intent of the
5 Vegetation Management Plan was really two-fold. It was to
6 provide a piece of evidence both in this Docket and in the
7 collateral permit applications to show what has been done
8 by the company or proposed to be done by the company
9 during the operational phase of the project to protect
10 sensitive natural resources.

11 But the second purpose which I would say is
12 equally as important was to provide a manual or a workbook
13 by which Vermont Gas and its employees and contractors
14 could actually operate the project. So we were trying to
15 provide a document that was, if you will, a living
16 document, in that it addressed what needed to be addressed
17 here. And with the other permit reviews as well as
18 something that could be used in the field over the years
19 as the project is operated.

20 So perhaps that's why it's a little bit
21 unwieldy because we wanted to -- rather than just listing
22 the treatment types -- we wanted to depict them on the
23 maps showing the parcel boundaries, showing the road,
24 showing the other features, so that folks that are
25 actually operating the project have an understanding of

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1 where they can do what in terms of managing vegetation.

2 Q. Okay. So if there is a slight conflict
3 between language in the MOU and the treatment practice
4 specifically detailed in the Vegetation Management Plan,
5 is it the specific detail and treatment depicted in the
6 Vegetation Management Plan that should control?

7 A. That would be my opinion. Yes. Because
8 Vegetation Management Plan is far more specific, and I
9 think very detailed in terms of what is allowed and what
10 isn't allowed.

11 Q. Okay. Could you -- I think I might have
12 identified a potential discrepancy. Could you turn to
13 section 2.2 of the MOU.

14 A. So I'm on page four of 13.

15 Q. Yes. And that deals with the Wet Clayplain
16 Forest adjacent to the Laplatte River in Hinesburg; is
17 that correct?

18 A. That's correct.

19 Q. So the MOU under paragraph 2.2-C provides that
20 during the operational phase of the project VGS will only
21 conduct vegetation management within the existing VELCO
22 right of way, and then there is a parenthetical reference.
23 VMP type B-3 as described in the Vegetation Management
24 Plan, do you see that?

25 A. I do.

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1 Q. What is the treatment called out in the
2 Vegetation Management Plan for this area?

3 A. It's not B-3. It's B-5. And that was one of
4 the final --

5 Q. Okay.

6 A. -- edits that were made to the Vegetation
7 Management Plan actually after the MOU was signed I
8 believe.

9 Q. Okay.

10 A. And B-5, if I may, is a more protective
11 criterion or management type than B-3 and involves
12 essentially no vegetation management other than VGS
13 maintaining a staked walking path over the pipeline to
14 provide greater protection vis-a-vis maintenance of that
15 existing riparian vegetation within those areas subject to
16 B-5.

17 Q. Okay. If I may, I'm wondering if Vermont Gas
18 would agree to strike that so we make that correction in
19 this exhibit.

20 CHAIRMAN VOLZ: You mean -- not strike
21 anything. Just strike the reference to B-3
22 on page four?

23 MS. DILLON: Maybe the correction to B-5
24 instead of B-3 on page four of three section
25 2.2-C.

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1 MS. HAYDEN: We have no problem making
2 that edit. And I believe I've provided the
3 Board with that exhibit already.

4 CHAIRMAN VOLZ: Yeah, we have the
5 exhibit.

6 MS. HAYDEN: But we will make the
7 correction.

8 CHAIRMAN VOLZ: The record will reflect
9 that you've agreed to that correction.

10 MS. HAYDEN: Yes, of course we do.

11 CHAIRMAN VOLZ: And the correction will
12 be there.

13 MS. HAYDEN: Thank you.

14 MS. DILLON: Okay.

15 BY MS. DILLON:

16 Q. And could you turn to page six of 13 section
17 2. -- I think that might be -- are there any other changes
18 to the Vegetation Management Plan references in the MOU
19 that need to be made based upon the changes to the
20 Vegetation Management Plan?

21 A. I recall seeing one, and I'm not sure that I'm
22 going to be able to find it right at this moment. I
23 believe there was -- at one point in the earlier draft of
24 the Vegetation Management Plan there was a treatment type
25 F-1 which no longer exists because of the way it was

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1 reorganized. And I believe I recall seeing an F-1 that
2 remained somewhere in the MOU. But --

3 Q. Page five of 13.

4 A. This is 2.5-C. Right. And I believe that
5 this should be replaced -- this F-1 should be replaced by
6 B-3.

7 Q. Should it be C?

8 MR. COEN: Is this something that could
9 be done off line? I don't quite understand
10 why this has to be done on the record.

11 MS. DILLON: Sure. I just wanted to
12 make sure that any corrections were made.

13 MR. COEN: I understand. That's
14 certainly something that could be done
15 during the break, and you could present it
16 to us.

17 MS. DILLON: Certainly.

18 CHAIRMAN VOLZ: I think a better
19 practice since both of you parties appear
20 before us on a regular basis and enter into
21 MOUs on a regular basis, a better practice
22 would have been to have identified these
23 discrepancies, approached each other, worked
24 out a new version of this MOU and submitted
25 that today instead of going -- walking us
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1 through all of this and tying up all of
2 these parties' time.

3 MS. DILLON: I apologize, Mr. Chairman.

4 CHAIRMAN VOLZ: Why don't you do this on
5 the break.

6 MS. DILLON: Certainly.

7 CHAIRMAN VOLZ: And Mr. Nelson can come
8 back, and you can admit the corrected --
9 make all the corrections at once.

10 MS. DILLON: Thank you.

11 CHAIRMAN VOLZ: Do you have any other
12 questions, Ms. Dillon?

13 MS. DILLON: I'm just checking my notes
14 real quick.

15 CHAIRMAN VOLZ: Do you have any other
16 questions, Ms. Dillon?

17 MS. DILLON: I'm just -- thank you.

18 CHAIRMAN VOLZ: I didn't hear your
19 answer.

20 MS. DILLON: No thank you. Thank you
21 very much.

22 CHAIRMAN VOLZ: Mr. Diamond, do you have
23 questions for this witness?

24 MR. DIAMOND: No questions, Mr.

25 Chairman.

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1 CHAIRMAN VOLZ: Mr. Palmer, you had
2 questions for this witness.

3 MR. PALMER: Yes, I do.

4 CROSS EXAMINATION

5 BY MR. PALMER:

6 Q. Thank you. Mr. Nelson.

7 A. Good morning.

8 Q. In your testimony 2/28/13 answer six page
9 seven line 16 to 17.

10 A. Just give me one moment to get there.

11 Q. Certainly.

12 A. Sorry. Page number was?

13 Q. It was answer six on page seven line 16 to 17.

14 A. Okay.

15 Q. Based on community input this process
16 continued after December 20, the -- resulting in the
17 2/28/13 alignment. Is this in regards to the moving of
18 the route off of the road to Monkton Boro, or is this in
19 reference to the move off the VELCO right of way on to our
20 property?

21 A. This was in reference to moving the alignment
22 off the road and back on to VELCO where it was feasible to
23 do so.

24 Q. It wasn't in reference for moving off the
25 VELCO on to our property?

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1 A. 2/28 alignment did include the segment that
2 was on your property.

3 Q. I'm trying to figure out if those are tied
4 together or if that was a separate --

5 A. No. That has been in both the 2/28 alignment
6 and the 6/28 alignment.

7 Q. Thank you. Further on in your testimony on
8 page eight lines 13 and 16, you state; only one area in
9 the vicinity of Rotax Road has not been previously field
10 assessed, and we expect that our preliminary evaluations
11 overstate the extent of resources and associated impacts
12 in this area. What made you come to that conclusion?

13 A. This refers to areas where we didn't have
14 landowner access to be able to do the necessary wetland
15 delineation work. And what we did is we utilized
16 available aerial information, available soils mapping, and
17 designated what we referred to in the Natural Resources
18 Plan set as approximate wetlands or approximate streams as
19 the case may be.

20 And in those instances where we drew the lines
21 of those features, in other words the extent of a wetland,
22 we did it in a manner that we believe overstates or
23 enlarges the extent of the feature in order to make sure
24 that we had adequately captured what the potential square
25 footage of wetland impact could be from construction of

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1 the project.

2 Q. And was that in reference to our property or
3 the Latreille property?

4 A. Let me look at the drawing to confirm before I
5 answer that. So in the Natural Resources Plan set, which
6 this is an appendix to JAN-2, I'm on sheets 21 and 22, and
7 the reference that I'm making there is to the Latreille's
8 report.

9 Q. In your supplemental testimony 2/28/13, in a
10 letter written by Jesse Therrien and Mr. Kyle Davis of
11 AAFM states; construction of the proposed transmission
12 main line 2/28/13 alignment is expected to cause only
13 temporary earth disturbance in farm lands during the
14 burial of the pipeline at a minimum depth of four feet
15 below the ground surface.

16 A. Could you just -- I haven't found where you
17 are yet. If you could tell me what exhibit or --

18 Q. This is a letter written by Jesse Therrien to
19 Mr. Kyle Davis of AAFM. Supplemental testimony 2/28/13.

20 CHAIRMAN VOLZ: So this was attachment
21 to the 2/28 testimony by Mr. Nelson?

22 MR. PALMER: Yes.

23 MR. COEN: Is there a number on that?

24 CHAIRMAN VOLZ: Exhibit Number?

25 THE WITNESS: There is.
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1 MR. PALMER: I don't have the Exhibit
2 Number.

3 CHAIRMAN VOLZ: I guess Mr. Nelson has
4 found it.

5 THE WITNESS: This is JAN-11, exhibit
6 Petitioner's Supplemental JAN-11, 2/28/13.

7 BY MR. PALMER:

8 Q. So anyway, it says is expected to cause only
9 temporary earth disturbance of farm lands during the
10 burial of the pipeline at a minimum depth of four feet
11 below the ground surface. Reclamation of the disturbed
12 area is built into the construction process which
13 specifies that the excavated soils are separated, top
14 soils, subsoils, and then replaced with subsoil placed
15 above the pipeline in the bottom of the trench, and the
16 topsoil returned to the top of the profile, maintaining
17 the potential of the land for future agricultural
18 productivity following construction.

19 In the reference to farm land, is VHB grouping
20 together land used for forage crops such as hay, corn and
21 soybeans along with intensively farmed land such as a CSA
22 or intensive vegetable farming?

23 A. In -- with respect to this the statement that
24 you read --

25 Q. Yes.

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1 A. -- that statement was a general statement that
2 we made that I would see as being applicable to all areas
3 of agricultural land that are caused by the project.

4 Q. So you feel that a vegetable garden is the
5 same as a soybean field or a corn field?

6 A. Well I don't know if I would agree to that
7 statement.

8 Q. There is a different level of sensitivity
9 between one and the other possibly?

10 A. Sure.

11 Q. Have you read my supplemental exhibit Palmer
12 REB-2; Pipeline, Power Lines and Organic Farms?

13 A. Yes, I have.

14 Q. Thank you. Appreciate that you did that. In
15 your rebuttal testimony page 28.

16 A. Which date? Is that the February testimony or
17 --

18 Q. I believe it is. It's in your rebuttal
19 testimony. I'll have this all down pat for my next 248
20 process.

21 CHAIRMAN VOLZ: You're doing quite well.

22 Don't be concerned.

23 MR. COEN: You are.

24 THE WITNESS: I'm sorry, page 28?

25 BY MR. PALMER:

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1 Q. Page 28.

2 CHAIRMAN VOLZ: We think it's the June
3 testimony is what we have here.

4 THE WITNESS: Hold on. Okay.

5 BY MR. PALMER:

6 Q. Page 28. Your answer 56 line six. You say in
7 response to Mr. Darby's statement; severe soil disturbance
8 such as that created by VGS during its construction of
9 this pipeline is the equivalent to an earthquake,
10 hurricane, tornado, forest fire occurring simultaneously
11 to the world of soil organism.

12 And your response is I find Ms. Darby's
13 characterization to be absurd. Did you read Ms. Darby's
14 list of education and work experience?

15 A. I did.

16 Q. Have you ever had any interaction with Ms.
17 Darby before?

18 A. I don't believe I've ever met her.

19 Q. And why do you think she would exaggerate or
20 say something like that if she didn't think it was true?

21 A. I don't know.

22 Q. In reading your education and employment
23 background I don't see anything that qualifies you as a
24 soil expert. Is there something that you have not
25 included in your resume that would make you an expert in
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1 soil or an agronomist?

2 A. I think that I would place my experience as
3 similar to that of Mr. Heindel. I'm certainly not an
4 expert in soil fertility but work routinely with matters
5 related to soil stabilization, erosion prevention, water
6 quality, hydrology, and soil and the treatment of soil is
7 a significant part of that work.

8 Q. But not on an organic status?

9 A. I guess I'm not sure I understand the
10 question.

11 Q. Well I believe that farming organically is a
12 little different than traditionally farming with
13 fertilizer, and wondering if you have any experience with
14 that.

15 A. Not directly with farming.

16 Q. You have been at pipeline installations. Is
17 this the first time for you to design a pipeline or
18 anything?

19 A. I'm not the designer of the pipeline. Our
20 firm has worked on the environmental assessment and
21 permitting, and we are also working with Vermont Gas
22 during the construction phase of one of the looping
23 projects up north.

24 Q. So you have seen the pipeline installation?

25 A. That's correct.

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1 Q. And you have seen the machines that make the
2 five-foot trench?

3 A. Yes.

4 Q. And are aware of their weights?

5 A. Yes.

6 Q. And you compare the installation of the gas
7 pipeline to the installation of a water line or sewer line
8 or a culvert. May I ask what your point was in that
9 statement?

10 A. The statement I think you're referring to is
11 on page 28, and answer 56, and my point is that these
12 kinds of excavations for various types of underground
13 utilities are routinely conducted, in fact, I would state
14 that what's happening with this project with respect to
15 agricultural lands is far more protective than what is
16 normally done when a trench is excavated, which is soil is
17 taken out, piled up, the pipe is put in, and soil is put
18 back in in no particular order.

19 Q. You don't usually build a road in order to put
20 in a standard pipeline.

21 A. Is there a question?

22 Q. No. I guess that was only a statement.
23 Sorry. Further on in your statement you said; I would
24 further note that the width of the excavated trench for
25 pipeline installation, to be restored per the above

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1 referenced protocol, would be only five feet which is a
2 far cry from the widespread destruction alleged by Ms.
3 Darby.

4 Can you -- implying the construction zone is
5 only going to be five-foot wide across our property. I've
6 heard 75 feet.

7 A. The width of the trench is intended to be five
8 feet. The temporary easement for construction when
9 trenching used is 75 feet which includes space for
10 equipment travel, space for placement of pipe as it's
11 being prepared to go in, space for the soil pile or piles
12 depending on whether the topsoil is being segregated and
13 stockpiled separately from the subsoil.

14 So within that 75-foot corridor there are a
15 number of activities that would be occurring during the
16 construction of the project that would be separate from
17 the trench itself.

18 Q. And you do understand my concern is not the
19 actual -- just the five-foot trench, but the entire impact
20 on the 75-foot zone.

21 A. I understand that. Yes.

22 Q. In a memo attached to Ms. Simollardes'
23 rebuttal testimony that was EMS-2 you responded to a
24 letter that was written by Nicole Dehne, Certification
25 Administrator for NOFA.

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1 A. Yes. That's correct. That's a memorandum
2 that I prepared dated June 26, 2013.

3 Q. And they raised concerns about the potential
4 impact on -- of the potential impact of this project, and
5 you said no activities are proposed by VGS that would
6 result in any interference or interruption with production
7 methods, whether organic or conventional, being practiced
8 by any farming operation located on lands that our
9 proposed transmission line would pass.

10 A. I'm not sure. Are you reading from the memo?

11 Q. That is a quote that you had said, yeah. In
12 response to that.

13 A. Sure. At the bottom of page one I believe is
14 where you were referring to. That's correct.

15 Q. And you have seen the pipeline construction in
16 reality.

17 A. That's correct.

18 Q. Now how could an installation of a pipeline
19 with 75-foot right of way not interfere or interrupt in a
20 farm when it cuts right through the middle of the farm
21 area?

22 A. Are you speaking about during the construction
23 process?

24 Q. Yeah.

25 A. Or following construction?

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1 Q. During the construction process.

2 A. The response that I was giving here was with
3 respect to following construction. Once the project has
4 been built. So that clearly there is some activity that
5 occurs that -- during the short construction period that
6 would interrupt other activities within that corridor. I
7 would agree with that.

8 Q. Do you have a time frame as to what that short
9 corridor will be that would be -- won't be able to get to
10 our fields?

11 A. I don't specifically know in your instance
12 what the duration of construction would be. But I believe
13 Mr. Heintz testified yesterday about the anticipated
14 duration of time to go through Monkton, and so there is
15 some information that he provided here yesterday.

16 Q. We did talk about the town. We didn't talk
17 about the specific road to our property. I'm curious why
18 is the practice of saving aside the topsoil and separating
19 it and removing it not being used where you're currently
20 putting the pipeline in Georgia up near the Polly Hubbard
21 Road. That's agricultural land.

22 A. I'm not familiar with that particular
23 location. I haven't seen it. And I don't know what you
24 saw there or exactly what the land use was that existed.
25 But I do know that in the context of this project we have

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1 been very clear the EPSC plans denote all the areas of
2 prime ag soils, whether those are used actively for
3 farming or not, are subject to the topsoil segregation
4 procedure. And that will be a compliance item that will
5 be reviewed in the field to ensure that the project is
6 being built consistent with the plans.

7 Q. Now there has recently been talk of horizontal
8 directional drilling at our property.

9 A. Yes.

10 Q. To receive the 300-foot setback that would
11 need to be drilled under the edge of the WRP; is that
12 correct?

13 A. That is my understanding. Yes.

14 Q. And would you need a permit for that?

15 A. What kind of permit? I guess is -- I'm not
16 sure exactly what you're asking.

17 Q. I don't know. What kind of permit would you
18 need if you needed access under the WRP?

19 A. My understanding is that the existing easement
20 within NRCS would have to be amended in order to allow
21 that. And that if that change were to be made, which I
22 think is very uncertain as to whether it could be made,
23 that the change in the alignment of the pipeline would be
24 subject to review by ANR and the Army Corp. in the context
25 of the currently pending permit applications.

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1 Q. I guess I take that as a yes.

2 A. With the constraints that I just gave. Yes.

3 Q. And do you agree that -- with the statement
4 that the smallest amount of hydraulic impact on property
5 would be provided by horizontal directional drilling, if
6 that was to be installed completely across our property?

7 A. I don't think that I would agree with that as
8 you've stated it.

9 Q. How would you state it?

10 A. I think that the pipeline as it's been
11 designed with the measures that are in place to restore
12 the soil profile and to implement trench breakers will not
13 result in an undue adverse impact on your property or the
14 natural resources features in the vicinity.

15 And as far as I know, there is not a criterion
16 that's the same as the one you just phrased it.

17 Q. Well I may have phrased it wrong. I'm just
18 trying to find out if they horizontally directionally
19 drill completely across our property, do you agree that
20 would mitigate a lot of our water problems?

21 A. I think that the construction technique as is
22 currently proposed, as currently designed, can be done in
23 a manner that would result in no significant change to
24 existing surface or groundwater flow patterns at your
25 property.

1 However, I also understand that there is some
2 consideration of other alternatives that's been discussed
3 over the last few days, and that if a portion of the
4 pipeline were to be drilled, and I'm thinking of the
5 portion that's closest to Rotax Road, that certainly would
6 address in my opinion, most of the concerns that you have
7 raised vis-a-vis any potential interruption of your
8 ongoing agricultural operations.

9 I think with respect to the segment of the
10 proposed pipeline further north, and closer to the Norris
11 property, that that doesn't in my opinion necessarily need
12 to be drilled in order to achieve comparable protections
13 that you're seeking for the area that's closer to the
14 house.

15 Q. Well the area that's closest to Norma Norris's
16 is where the water would come in. How would you -- that
17 would still be open trench, that would still cause the
18 problem, starts the problem. You know, if you drilled the
19 whole thing right across there it could alleviate all the
20 potential is my point.

21 A. I'm not sure if I should treat that as a
22 question. I'm happy to speak to that.

23 CHAIRMAN VOLZ: I think he did ask a
24 question.

25 BY MR. PALMER:

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1 Q. If you horizontally directionally drill across
2 the entire length of our property wouldn't that be the
3 least impact on water flow?

4 A. I think that the trenching method for the
5 section further to the north can be done in a manner that
6 would not have a significant impact on your property. I
7 think that section closer --

8 Q. You do understand that this -- if you did
9 directionally drill the whole thing, wouldn't it be
10 better, wouldn't it alleviate any potential problem?

11 CHAIRMAN VOLZ: Why don't you answer his
12 question and then if you want to explain it,
13 go ahead.

14 THE WITNESS: I'm not sure that it would
15 be measurably better. I think that, you
16 know, we are talking about very fine
17 increments here. And I guess maybe there is
18 some tiny increment that drilling the whole
19 thing might achieve, but I'm having a hard
20 time seeing it given the construction
21 methods, the restoration methods, that are
22 currently included in the plan.

23 MR. PALMER: Thank you. That's the end
24 of my questions for now.

25 MR. COEN: Let me just follow up on
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1 that, Mr. Nelson. But if you directionally
2 drill from the -- Mr. Norris's property,
3 okay, all the way through, it would in fact
4 ensure that any of the problems that Mr.
5 Palmer is concerned about would be taken
6 care of; is that correct? And if you don't,
7 there is a possibility that they would not
8 be taken care of.

9 THE WITNESS: I think that's a fair
10 statement.

11 MR. COEN: Thank you.

12 CHAIRMAN VOLZ: I had a follow up to
13 this. Suppose -- your view is that if it's
14 built the way the company is proposing
15 today, if I understand you correctly your
16 view is that if the crossing of Mr. Palmer's
17 property is built the way the company is
18 proposing today, in fact there won't be the
19 problems that Mr. Palmer and Mr. Heindel are
20 worried about, is that your position?

21 THE WITNESS: That is my position. Yes.
22 That is my position.

23 CHAIRMAN VOLZ: So if it were built that
24 way and the problems did emerge, can they be
25 fixed afterward or is it too late?

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1 THE WITNESS: It would depend on what
2 the problems were. And I guess I would sort
3 of break that down into two areas, and
4 consistent with what Mr. Heindel spoke of,
5 surface water and groundwater. I think that
6 surface water issues would be more easily
7 dealt with after the fact because it's at
8 the ground surface and it's easily seen.

9 I think the likelihood of surface water
10 issues is, I think, really virtually non
11 existent because of the fact that the land
12 is going to be returned to its existing
13 contours, existing slope, and not altered
14 from what's out there today.

15 As far as the groundwater issues, if
16 there was to be an emergence of water at a
17 location that was problematic for Mr.
18 Palmer, that would require going back in and
19 doing some excavation to say install an
20 additional trench breaker or to say create a
21 groundwater drain like Mr. Heindel spoke
22 about. But it would be something that
23 should it occur, and I don't think it would
24 occur given the number of locations of
25 trench breakers that were proposed, it would
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1 be remedied in my opinion quite readily.

2 CHAIRMAN VOLZ: What about Mr. Heindel's
3 point that the trench breakers themselves
4 create problems because they cause back up
5 of water flow that then causes surface water
6 to appear?

7 THE WITNESS: I guess I go back to the
8 nature of the soil that we are talking about
9 here which is Vergennes clay. It's a heavy
10 clay soil. It's not transmitting large
11 quantities of groundwater because it's so
12 dense, so tight. So that the trench
13 breakers spaced, if they are every
14 approximately 100 feet or 150 feet through
15 this segment, are not holding back large
16 quantities of water because there are not
17 large quantities of water flowing through
18 the soil in my opinion.

19 It's not as though we are dealing with
20 say a gravelly soil that can transmit large
21 volumes of water. So I don't see that as
22 something that would be very likely to
23 occur.

24 CHAIRMAN VOLZ: What's going to be
25 packed around the pipe and to the surface
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1 above the pipe, what type of soil?

2 THE WITNESS: There is going to be
3 bedding material that will be used beneath
4 and around the pipe. And then above that
5 will be the clay, and then above that will
6 be the topsoil.

7 CHAIRMAN VOLZ: So groundwater itself
8 won't be able to permeate and collect in the
9 trench around the pipe or below the pipe?
10 Below that clay that's the top layer.

11 THE WITNESS: Well it will to the extent
12 that it does in those soils currently,
13 because the surrounding water table outside
14 the trench is not going to be changed, so
15 there will be times of year at certain
16 locations where I expect the water will be
17 ponded within the materials in the trench.

18 CHAIRMAN VOLZ: Where it couldn't be
19 before because there was no pipe trenched
20 there before. That's the concern. You're
21 creating a place where water can go where it
22 couldn't go before and where it could
23 collect.

24 THE WITNESS: Well but it's in the soil
25 today. To the extent that there is a high

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1 water table, it goes through that area. Now
2 I guess what I'm saying -- what I am saying
3 is that that condition, whether the water
4 table is high or low, is not altered by the
5 presence of the pipe. It's -- the intent is
6 to maintain the existing conditions, the
7 trench breakers are intended to prevent the
8 pipeline from becoming a conduit for the
9 movement of water that isn't currently
10 moving through these areas. So whether
11 that's surface water that flows down into
12 the area where the excavation has been
13 conducted or groundwater that's moving
14 horizontally, if you will, through the soil,
15 the trench breakers are intended to maintain
16 the status quo.

17 CHAIRMAN VOLZ: Thanks.

18 MR. BURKE: Well yeah, just now I'm
19 confused because I thought it was Mr.
20 Heintz, I think, indicated that when the
21 pipeline is laid, underneath the pipeline
22 there is going to be a certain amount of
23 material that probably is best described as
24 gravel, did I miss that?

25 THE WITNESS: That's correct. But the
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1 trench breakers would provide an
2 interruption to that, if you will, so the
3 trench breaker goes to the bottom of the
4 trench, and the more permeable material is
5 between them.

6 CHAIRMAN VOLZ: So what's going -- to
7 the extent the trench breaker acts like a
8 dam, and the trench that the pipeline is in
9 acts like a conduit, the water that's going
10 to back up to the extent it can behind each
11 trench breaker is the amount of water that
12 can get into the trench for that hundred
13 foot or 150-foot piece. And that's as much
14 as there could be.

15 THE WITNESS: That's exactly correct.
16 Yeah.

17 MR. BURKE: Mr. Nelson, I want to go
18 back to the issue of organic farming for a
19 moment.

20 THE WITNESS: Okay.

21 MR. BURKE: Explain to me your
22 understanding of what's required to be
23 certified as an organic -- as an organic
24 farming operation.

25 THE WITNESS: In Vermont the program is
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1 administered by the Northeast Organic
2 Farming Association, I believe it is NOFA,
3 Vermont. And they require that no
4 prohibited substances be applied to those
5 lands for a period of three years in order
6 to certify a field as organic. That's my
7 understanding of what their program
8 fundamentally requires.

9 I think there are other requirements,
10 but that's the conditional, and I think most
11 significant requirement that I've seen.

12 MR. BURKE: And you're satisfied that
13 even with the change of -- and there will be
14 a change of flow here as far as the
15 groundwater is concerned, you think you can
16 mitigate that. But there won't be the
17 potential for problems to develop with
18 regard to that theory of organic farming and
19 the certification that's required there
20 because of the water flow itself?

21 THE WITNESS: I do. And I think that,
22 you know, a key to that is, for example,
23 there has been some discussion here today
24 about the adjacent property, the Norris
25 property to the north that has tile drains.

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1 And certainly included in the EPSC plans is
2 a requirement that any tile drains that are
3 intersected by the construction of the
4 project need to be restored so that they
5 continue to function.

6 So for example, if you were to have an
7 organically certified property, which we
8 don't in this instance, but if we did, it
9 would be important to make sure that as the
10 plans provide for, that tile drains that
11 could bring water from an adjoining non-
12 organic parcel were not interrupted, thus
13 causing water potentially to flow to the
14 adjacent parcel that was certified.

15 MR. BURKE: In your December 20
16 prefiled, I know -- I hate to make you go
17 through these volumes. I feel like you're
18 going to -- you've already done your workout
19 for the day.

20 MR. COEN: He made us go through them.

21 MR. BURKE: That's true.

22 THE WITNESS: I've got it here.

23 MR. BURKE: Okay. On page 7 of 43.

24 THE WITNESS: Okay.

25 MR. BURKE: There is a bullet at the
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1 very top of that page, that says; use of
2 horizontal direct drilling to avoid impacts
3 to streams, rivers, and other sensitive
4 resources is a goal that you're employing in
5 your overall planning here; is that correct?

6 THE WITNESS: That's fair. I would say
7 that that's tempered against other project
8 constraints, so that that's not to say that
9 we are using HDD everywhere, but certainly
10 it is one of the criteria that we were
11 trying to utilize to minimize the impacts.

12 MR. BURKE: So at least in the original
13 methodology you didn't consider this area
14 running from Norris and down through the
15 Palmer property to be something that might
16 have been a sensitive resource?

17 THE WITNESS: I think I understand that
18 to mean that it didn't rise to the level
19 that we recommended that that should be
20 directionally drilled.

21 MR. BURKE: Have you rethought that at
22 all?

23 THE WITNESS: I think that given what we
24 have seen on the site visit, and given what
25 we have heard, that there certainly may want
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1 to be some consideration for looking at
2 drilling under a portion at least of the
3 Palmer property.

4 As I said before, I don't believe it's
5 essential to ensure that existing conditions
6 can be maintained. But you know, clearly a
7 number of concerns have been raised.

8 MR. BURKE: Thank you.

9 MR. COEN: Mr. Nelson, were you here
10 yesterday for Mr. Hurlburt's testimony?

11 THE WITNESS: Yes. I was.

12 MR. COEN: He expressed some concerns
13 about the crossing on his property -- of the
14 line crossing some of the tributaries of the
15 Little Otter and the process used for that.
16 Did you hear that testimony?

17 THE WITNESS: I did.

18 MR. COEN: Okay. Okay. And I was
19 concerned when I heard it. Can you explain
20 the process you would use in crossing those
21 streams? Since I don't believe you're going
22 to be directionally drilling there.

23 THE WITNESS: That's correct. And I
24 know when he was speaking it wasn't entirely
25 clear to me the exact locations that he was
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1 speaking of. But I believe one of them is
2 where the pipeline is along Old Stage Road,
3 and that is -- the pipeline is proposed to
4 be located on the east side of Old Stage
5 Road.

6 And this is -- I'm looking now at the
7 exhibit that's been marked exhibit
8 Petitioner Surrebuttal JH-1, 9/17/13. And
9 on this drawing the area that I'm thinking
10 of is sort of near the very center of the
11 drawing, it's an area that is labeled as
12 proposed stream crossing at 2012-TB --
13 TB-JB-7. This is a perennial stream
14 crossing. It's a tributary of the Little
15 Otter Creek, and I believe it's one of the
16 locations that Mr. Hurlburt was referring
17 to.

18 At that location we specifically located
19 the line as close as possible to the
20 existing road crossing so as to avoid new
21 impacts to the channel of the stream and to
22 basically try to collocate where the stream,
23 if you will, has already been impacted by
24 the existing road crossing. So I don't see
25 a particular concern in that area given that
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1 -- the road infrastructure that's currently
2 there.

3 MR. COEN: Okay. But my assumption --
4 Mr. Hurlburt apparently owns a lot of land.
5 And my assumption is you may be crossing at
6 other places. But my -- the question I have
7 is he described the process that you would
8 use to make the crossing and the possibility
9 of blasting, of the concern of the collapse
10 of the streambed. And then he suggested
11 putting concrete over it.

12 Would you maybe describe the process as
13 you see it and why you would -- I shouldn't
14 be concerned about what he had to say?

15 THE WITNESS: Sure. Just taking one
16 step back, one of the collateral permits,
17 and I alluded to this in the correction to
18 my testimony this morning, that the project
19 requires is a stream alteration permit from
20 ANR. And that permit has been applied for.
21 We are working with Chris Brunell who is in
22 the river management program, and he's
23 conducting a crossing-by-crossing review of
24 every stream crossing that is proposed by
25 the project, the methodology that's proposed

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1 to be used for those crossings, and
2 providing recommendations, input, as he sees
3 fit, to ensure that the project does not
4 unduly adversely impact these streams.

5 So that's a general statement. With
6 respect to this location by the road and Mr.
7 Hurlburt's suggestion of concrete, I believe
8 -- I don't know if Mr. Heintz addressed this
9 directly yesterday -- but he and I have
10 conferred about that. The pipeline will be
11 concrete coated in that area under the
12 stream, and we believe that the design as
13 it's proposed through that area will not
14 have any impact on the stream as it passes
15 adjacent to the -- under the road at that
16 location.

17 MR. COEN: Are there -- well okay.
18 You're getting specific to this location.
19 But as I said, you're going to be crossing a
20 lot of streams.

21 THE WITNESS: That's correct.

22 MR. COEN: Which may not be adjacent to
23 the road.

24 THE WITNESS: That's correct.

25 MR. COEN: So I guess I'm more
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1 interested in his concern about the blasting
2 and the streambed collapsing.

3 Do you want to address that?

4 THE WITNESS: Sure. I mean generally
5 what we see in these circumstances is that
6 the streambed, if the stream is bedrock
7 controlled, you're typically going to see a
8 circumstance where there is what we call a
9 gaining condition, where there is
10 groundwater that's coming into the stream
11 channel, because typically they are in the
12 low point in the hydrologic system.

13 So the idea that the stream would
14 collapse is not something that I see as
15 something that would happen at all. I think
16 that to the extent that there is trenching
17 through the streambed, I think, you know,
18 the restoration of the bed elevation will be
19 important, and that's again part of the
20 plan, to make sure that by doing that
21 bedrock blasting or trenching as required,
22 that there isn't a change to that -- the
23 natural condition of the stream as it passes
24 through there.

25 Because it's important that we are not
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1 opening up a new conduit, if you will, for
2 the water to flow in vis-a-vis the pipeline
3 trench.

4 CHAIRMAN VOLZ: So how do you keep the
5 water from getting into the pipeline trench
6 once you've dug the trench and now the
7 stream is flowing over it, what prevents the
8 water from going down into it?

9 THE WITNESS: Well if you can envision
10 the stream channel as the low point in the
11 landscape, and the ground goes up on either
12 side, so the trench being however deep it
13 is, six feet or thereabouts.

14 CHAIRMAN VOLZ: It's going to come down
15 and go back up.

16 THE WITNESS: It's going to come back
17 up. The water isn't going to flow uphill
18 through the trench away from the stream.

19 MR. COEN: Thank you.

20 THE WITNESS: Sure.

21 CHAIRMAN VOLZ: Any follow up to our
22 questioning?

23 (No response.)

24 CHAIRMAN VOLZ: Any redirect?

25 MS. HAYDEN: Just a few questions.
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REDIRECT EXAMINATION

BY MS. HAYDEN:

Q. Mr. Nelson, you were asked some questions by Ms. Levine concerning the status of the -- what's called the 404 permit, Section 404 permit, or Army Corp. of Engineers' permit, do you recall that?

A. I do.

Q. And she asked you a question to the effect of whether or not the EPA has approved that permit. Do you recall that colloquy?

A. I do.

Q. Does the EPA itself approve a 404 permit application?

A. No. They do not.

Q. Can you just describe their role in connection with an application for an Army Corp. permit?

A. Sure. EPA is one of the federal advisory agencies that the Corp. consults with in the course of reviewing 404 permit applications. They will obtain input from EPA, as they always do when a 404 application is received and reviewed, and that will be something that the Corp. will consider in due course as they proceed towards the permit decision.

Q. What is your understanding of the status of the Army Corp.'s review of Vermont Gas's wetland permit

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1 application at this point?

2 A. Well the review process is ongoing. The Corp.
3 has been out on a number of site visits, has asked a
4 number of questions regarding the materials that have been
5 presented, and I believe that the Corp. is preparing to go
6 out to public notice fairly soon on the project.

7 Q. Mr. Palmer asked you some questions regarding
8 his exhibit, which I believe I gave you my copy of the
9 Pipeline, Power Lines. Do you have that in mind?

10 A. I do.

11 Q. Do you have that in front of you?

12 A. I do.

13 Q. Can you explain to the Board -- well there
14 were some recommendations in that study, a report
15 regarding construction techniques, do you recall that?

16 A. Yes. I do.

17 Q. And can you explain to the Board if and to
18 what extent the recommendations in that document are
19 similar to or would be different than the construction
20 techniques that Vermont Gas is talking about utilizing in
21 this case where trenching is involved?

22 A. Sure. So this exhibit Palmer Rebuttal 2
23 speaks to an issue related to an organic farming operation
24 in Minnesota where, as I understand it, a pipeline project
25 was proposed. And I guess the one thing I would note that

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1 it makes mention of is that for an organic farm there is
2 an organic system plan or an organic production plan that
3 if someone were to have an organic farm along this
4 corridor, they would have to prepare that, and that would
5 be something that NOFA would approve. And that the
6 permittee in this instance was required to work with that
7 organic producer and their plan to implement additional
8 measures to ensure that there was nothing that would
9 happen that would cause the farm to come out -- to become
10 non-compliant with their plan.

11 And there was in that exhibit, Mr. Palmer's
12 exhibit, there was on pages 33 and 34, there was a
13 bulleted list of 10 items that were to be considered by
14 the company and implemented as part of working with those
15 organic producers. And I'm not going to go through all of
16 them, but one of them I thought was interesting which is
17 remove and store organic topsoil and subsoil separately
18 and replace them in proper sequence. This is obviously
19 not something that -- not only something that Vermont Gas
20 would do in the context of an organic farm, but it's
21 something we have already proposed in the EPSC plan and
22 will be doing for all areas of prime ag soils that the
23 project passes through.

24 So, you know, without going through each and
25 every one of these, I think that it would be very

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1 straightforward for a plan that -- to be developed that
2 would address and protect any organic farming operation,
3 and frankly I think it would be fairly redundant of
4 measures that are already included in the EPSC plan and
5 the Vegetation Management Plan that have already been
6 prepared for the project.

7 MR. COEN: Can I follow up on that? If
8 it was horizontally drilled from the Norris
9 property that would be moot; is that
10 correct?

11 THE WITNESS: Yes. I think the only
12 qualifier I would attach to that is if there
13 were to be some vegetation management even
14 over the drilled segment, it would be
15 important that Vermont Gas be aware of any
16 organic certification and any requirements
17 associated with that so that there was no
18 conflict. But the concern would be less.

19 MR. COEN: Thank you.

20 MR. YOUNG: Can I just follow up? Is
21 Vermont Gas proposing to essentially adopt
22 the type of criterion that you're talking
23 about with respect to all organic farms that
24 may be en route?

25 THE WITNESS: I'm not prepared to answer
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1 that fully. I guess the one thing I would
2 note is that I am only aware of the
3 possibility -- I don't know if there are any
4 organic farms along the route. There may be
5 one. I believe the Smith farm in New Haven,
6 as I understand it, is organic, an organic
7 farm, where this project passes through that
8 property is actually a wetland area not a
9 farm field.

10 At this point to the best of my
11 knowledge there are no organic farm lands
12 that the project will pass through.
13 Certified.

14 CHAIRMAN VOLZ: You mean certified
15 organic.

16 THE WITNESS: Correct.

17 MS. HAYDEN: I have nothing further.

18 CHAIRMAN VOLZ: Okay. It's quarter to
19 12. I'm not sure there is a point in
20 starting another witness. So I think maybe
21 we will just take our lunch break now and
22 come back at 1.

23 MR. BURKE: I just wanted to say
24 something. You know, it's a daunting task
25 -- I'll just speak for myself, not the Board
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1 now, it's a daunting task to sit down and
2 represent oneself in this type of a hearing.
3 And I know it's clear that this has a
4 dramatic amount of impact on some of the pro
5 se participants. The way you presented your
6 case and the way you've handled yourself
7 from my perspective requires that we say
8 something positive to how you're dealing
9 with this, Mr. Palmer.

10 MR. PALMER: Thank you.

11 MR. COEN: You're excused.

12 CHAIRMAN VOLZ: You're excused. Be back
13 at one o'clock. Thank you.

14 (Recess was taken.)

15 CHAIRMAN VOLZ: Okay. We are back from
16 lunch and ready to keep going. I just had a
17 couple of housekeeping matters I wanted to
18 take up.

19 Let's see. The Board has asked -- the
20 Board has been asked if there were any
21 questions for several witnesses, and the
22 Board does not have questions for the
23 following witnesses who have submitted
24 prefiled testimony but are not presently
25 scheduled for any cross examination. And
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1 that would be VGS witness John Crock; one
2 DPS witness George Nagle, and one AOT
3 witness Craig Keller. So we don't have
4 questions for those folks. We also don't
5 have questions for Mr. Sweetser from Vermont
6 Fuel Dealers Association. He does not need
7 to appear on Friday. If Vermont Fuel
8 Dealers Association and VGS are agreeable
9 with that approach, unless you had questions
10 for him. So those four witnesses don't need
11 to appear.

12 We also have outstanding testimony from
13 two landowners; Mr. Baldwin and Mr. Speroni.
14 They have not yet appeared at these hearings
15 as far as I'm aware. If they do appear
16 between now and Friday, then we may have
17 some questions for them. But since they are
18 not here, we have no way to communicate with
19 them. So for the above-identified
20 witnesses, the ones who we have just said
21 don't need to appear, as well as Mr. Baldwin
22 and Mr. Speroni, we want to remind everyone
23 that their testimony is not automatically in
24 the record. Sponsoring party must appear
25 and seek admission of the testimony.

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1 So for example, if any -- like for
2 example, Mr. Cota, if you wanted to get your
3 witness's testimony in today, we can put it
4 in today, and then if you don't want to have
5 you or Mr. -- or your lawyer appear for the
6 rest of the week, that's okay with us. We
7 can do it that way.

8 MR. COTA: Okay.

9 CHAIRMAN VOLZ: The same for any of the
10 other witnesses. If we want to go ahead and
11 put them in today, we can. Okay. So on a
12 timing matter, tomorrow we are planning to
13 start at 1:30. We have Board business we
14 have to do tomorrow morning. We are going
15 to revisit that start time at the end of the
16 day today, depending on -- confirming that
17 that's the time we are going to pick or to
18 adjust it depending on how well we did
19 today. If we finish all the witnesses that
20 we wanted to finish today, then we will
21 stick with 1:30. If we didn't finish all
22 the witnesses, then we may need to figure
23 out a way to deal with them tomorrow.

24 And what I'm -- who I'm referring to are
25 I'm hoping to get through Michael Buscher,
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1 David Raphael, Eric Sorenson, Jenna Calvi,
2 Eric Sorenson, Jatindar Kumar, Bob Popp.

3 MS. HAYDEN: Mr. Brunner.

4 CHAIRMAN VOLZ: Mr. Brunner, Heather
5 Darby I think I mentioned her. Were there
6 any others? We want to get through all of
7 those witnesses today, if possible. Or
8 otherwise if we do, we will start tomorrow
9 at 1:30. And we may go late today to
10 accomplish that.

11 MS. HAYDEN: Chairman Volz.

12 CHAIRMAN VOLZ: Yes.

13 MS. HAYDEN: With respect to the
14 Speronis and the Baldwins, it would be our
15 preference that we stipulate that testimony
16 into the record if they don't appear.
17 Because I don't know that these landowners
18 understand the process that their testimony
19 was filed with the Board, but that maybe it
20 wouldn't be introduced into the evidentiary
21 record. And unless the parties object, then
22 we would propose that their testimony be
23 admitted so there isn't a procedural
24 deficiency.

25 CHAIRMAN VOLZ: Does any party object to
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1 doing that?

2 MS. DILLON: No objection.

3 MR. BURKE: So you're going to move the
4 evidence and testimony?

5 MS. HAYDEN: I can't speak for the
6 accuracy of the testimony, but we would
7 propose that it be stipulated into the
8 record as their testimony.

9 MS. PORTER: The Department would
10 support that.

11 CHAIRMAN VOLZ: Okay. All right. Then
12 that's what we will do. Those two, the
13 testimony of Mr. Baldwin and Mr. Speroni are
14 admitted.

15 (The Prefiled Testimony of Aldo E.
16 Speroni was admitted into the record.)

17 (The Prefiled Testimony of Matthew
18 Baldwin was admitted into the record.)

1 CHAIRMAN VOLZ: Thank you. Any other
2 procedural or preliminary matters? Yes, Mr.
3 Palmer.

4 MR. PALMER: Would Mr. Freedman's
5 testimony be admitted at this point?

6 CHAIRMAN VOLZ: Yes. And we are going
7 to send questions to him, and is there any
8 objection to admitting Mr. Freedman's
9 testimony?

10 MS. HAYDEN: No objection.

11 CHAIRMAN VOLZ: Okay. Then it's
12 admitted.

13 (The Prefiled Testimony of Curt Freedman
14 was admitted into the record.)
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1 CHAIRMAN VOLZ: And we are planning --
2 we are in the process of preparing the
3 questions that we want to send out which we
4 will share with you soon, and then any party
5 who wants to ask any questions to those
6 questions can submit those in writing as
7 well. And Mr. Freedman can answer all of
8 those together and send them back in. The
9 answers -- questions and answers will be
10 admitted into the record as well.

11 MS. DILLON: Mr. Chairman, I have one
12 question. We have two witnesses; Mr. Popp
13 who CLF has indicated they don't have any
14 questions for. And Ms. Calvi that VGS had
15 previously identified they had questions but
16 they no longer have questions for.

17 I'll just confirm they are here. If the
18 Board doesn't have any questions for them --

19 CHAIRMAN VOLZ: They could go home.

20 MS. DILLON: Exactly.

21 CHAIRMAN VOLZ: Or go back to work. We
22 don't have questions for Popp or Calvi.

23 MR. COEN: Does anybody else have
24 questions for Popp or Calvi?

25 MR. SCIARROTTA: No.
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1 CHAIRMAN VOLZ: They could be excused
2 then, and you could just admit their
3 testimony.

4 MS. DILLON: Great. Thank you very
5 much.

6 CHAIRMAN VOLZ: When we get to that
7 part. We could do it now. Do you want to
8 admit their -- the admission of their
9 testimony now while they are here in case
10 there is an issue?

11 MS. DILLON: Sure. I'll start with Ms.
12 Calvi.

13 CHAIRMAN VOLZ: Okay.

14 MS. DILLON: Jenna Calvi prepared direct
15 testimony and rebuttal testimony. With her
16 direct testimony she had an exhibit, one
17 exhibit which was her resume. We would --
18 get the right number, and that is ANR JC-1.

19 CHAIRMAN VOLZ: Okay.

20 MS. DILLON: We would move for the
21 admission of ANR JC-1 as well as her direct
22 testimony.

23 CHAIRMAN VOLZ: And rebuttal testimony.

24 MS. DILLON: In addition she had
25 rebuttal testimony, and she had an exhibit
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1 with her rebuttal testimony which was
2 exhibit ANR Reb-JC-1. We would move the
3 admission of her testimony and exhibit ANR
4 Reb-JC-1.

5 CHAIRMAN VOLZ: Any objection to the
6 admission of both sets of testimonies and
7 both exhibits?

8 MR. SCIARROTTA: No.

9 CHAIRMAN VOLZ: It's admitted.

10 (Exhibits marked ANR-JC-1 and ANR
11 Reb-JC-1 were admitted into the record.)

12 (The Prefiled Testimony of Jenna Calvi
13 was admitted into the record.)
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1 MS. DILLON: Mr. Robert Popp prepared
2 direct testimony dated June 14, 2013. With
3 his direct testimony he had an exhibit which
4 was ANR RP-1. We move for the admission of
5 his direct testimony and ANR RP-1.

6 CHAIRMAN VOLZ: Any objection?

7 MS. HAYDEN: No objection.

8 CHAIRMAN VOLZ: That's admitted.

9 (Exhibit ANR RP-1 was
10 admitted into the record.)

11 (The Direct Prefiled Testimony of Robert
12 Popp was admitted into the record.)
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1 MS. DILLON: Mr. Popp also prepared
2 rebuttal testimony dated August 14, 2013.
3 With his rebuttal testimony he had an
4 exhibit which was ANR Reb-RP-1. We move the
5 admission of Robert Popp's rebuttal
6 testimony and exhibit ANR Reb-RP-1.

7 CHAIRMAN VOLZ: Any objection?

8 MS. HAYDEN: No objection.

9 MR. SCIARROTTA: No.

10 CHAIRMAN VOLZ: Okay. It's admitted.

11 (Exhibit ANR Reb-RP-1 was
12 admitted into the record.)

13 (The Rebuttal Prefiled Testimony of
14 Robert Popp was admitted into the record.)
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1 MS. DILLON: Thank you.

2 CHAIRMAN VOLZ: Thank you. They are
3 both admitted.

4 MR. BURKE: Could I inquire just before
5 you leave, Ms. Calvi, where were you raised?
6 Where did you grow up?

7 MS. CALVI: Boston, Massachusetts.

8 MR. BURKE: Thank you.

9 MS. CALVI: I'm not really into Joanne
10 Calvi which I get all the time.

11 MR. COEN: She is not under oath.

12 CHAIRMAN VOLZ: I understand that. She
13 might be telling me -- I believe her.

14 MS. PORTER: The Department has a
15 witness that's similarly situated. He's in
16 the room now if you would like us to go
17 ahead.

18 CHAIRMAN VOLZ: Yeah.

19 MS. PORTER: This is the rebuttal
20 testimony of George Nagle dated August 14,
21 2013. There are no exhibits. And we would
22 move its admission.

23 CHAIRMAN VOLZ: Any objection?

24 MS. HAYDEN: No objection.

25 CHAIRMAN VOLZ: It's admitted. Thank
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1 you.

2 (The Prefiled Testimony of George R.
3 Nagle was admitted into the record.)
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1 MS. PORTER: And the witness is excused?

2 CHAIRMAN VOLZ: Yes, the witness is
3 excused. He's also welcome to stay and
4 listen if he's interested.

5 MS. HAYDEN: Mr. Chairman, do you want
6 us to go ahead and move Mr. Crock's
7 testimony while we are --

8 CHAIRMAN VOLZ: Sure. Might as well
9 take care of all of this at once.

10 MS. HAYDEN: Mr. Crock had prefiled
11 testimony dated December 20, consisting of
12 11 pages together with five exhibits;
13 testimony on February 28, consisting of
14 eight pages, and then again on June 28,
15 consisting of eight pages together with an
16 exhibit supplemental JC -- JGC-1.

17 And I would like to move the admission
18 of the December, February and June
19 testimonies together with exhibits JGC-1
20 through 5 and supplemental JGC-1 from June.

21 CHAIRMAN VOLZ: Any objection?

22 (No response.)

23 CHAIRMAN VOLZ: Okay. They are
24 admitted.

25 (Exhibits marked JGC-1 through 5 and
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1 Supp. JGC-1 were admitted into the record.)

2 (The Prefiled Testimony of John Gordon
3 Crock was admitted into the record.)

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CHAIRMAN VOLZ: Anything else?

MS. HAYDEN: The only other record keeping we were asked that -- ANR and the Petitioner were asked to identify during the break revisions to the MOU. There were three minor nits, and we have marked them on the hard copy that we have now handed to Mr. Kreis as well as the other Board members. They were brought in over the break, but I can read them into the record very quickly. They are marked on the document.

CHAIRMAN VOLZ: Okay.

MS. HAYDEN: Which is exhibit Petitioner VGS-ANR-1.

CHAIRMAN VOLZ: Okay.

MS. HAYDEN: On page four of 13 section 2.2-C there was a minor change to a reference -- a cross reference in the plan. On page 2.5 there is a -- 2.5-C again a minor change to a cross reference in the Vegetation Management Plan which has been marked on the document.

And then on the following page 6, in section 2.6-E, similar cross reference change has been made. And those are all CAPITOL COURT REPORTERS, INC.

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1 marked in the exhibit as it's been submitted
2 to the Board.

3 CHAIRMAN VOLZ: Okay. So you're moving
4 to admit that exhibit.

5 MS. HAYDEN: I do move to -- actually I
6 did not move the admission of Mr. Nelson's
7 testimony, exhibits or the MOU before he
8 left the stand.

9 CHAIRMAN VOLZ: Okay.

10 MS. HAYDEN: I move the admission of all
11 of his testimony, exhibits, and the
12 Memorandum of Understanding with the two
13 attachments which is labeled exhibit
14 Petitioner VGS-ANR-Joint-1.

15 CHAIRMAN VOLZ: Okay. Any objection to
16 admitting all of that?

17 MR. SCIARROTTA: No.

18 CHAIRMAN VOLZ: Okay. It's all
19 admitted. Thank you.

20 (Exhibit VGS-ANR-Joint-1 was
21 admitted into the record.)

22 MS. DILLON: I just want to make -- and
23 you called out the 19-B change as well?

24 MS. HAYDEN: Can you tell me what page?

25 MS. DILLON: Page 10, top of the page.
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1 CHAIRMAN VOLZ: Is this moving from
2 lesser than to greater than or vice versa?

3 MS. DILLON: No.

4 MS. HAYDEN: There is a fourth -- on the
5 top of page 10, and again it's marked on the
6 document that's been filed, there is a
7 similar cross reference change from B-3 to
8 B-5. So that was not on the list.

9 CHAIRMAN VOLZ: Okay. Thank you. So
10 with all of those changes -- it's admitted
11 with all of those changes. Thank you.

12 MS. DILLON: Thank you.

13 MS. HAYDEN: Thank you.

14 CHAIRMAN VOLZ: Are we up to Mr.
15 Buscher?

16 MS. HAYDEN: Yup.

MICHAEL J. BUSCHER

Having been duly sworn, testified
as follows:

MR. COEN: Please state your name for
the record.

THE WITNESS: Michael J. Buscher.

MR. COEN: Thank you.

DIRECT EXAMINATION

BY MS. HAYDEN:

Q. Mr. Buscher, can you please state your
occupation?

A. Landscape architect.

Q. Do you have in front of you a document dated
December 20, 2012 consisting of six pages together with a
cover page and table of contents?

A. I do.

Q. Was that document prepared by you or under
your direct supervision?

A. It was.

Q. Is it true and accurate to the best of your
knowledge and belief?

A. It is.

Q. And you also have with that testimony two
exhibits which are marked as exhibit Petitioner MJB-1 and
exhibit Petitioner MJB-2?

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1 A. I do.

2 Q. And were those documents prepared by you or
3 under your direct supervision?

4 A. They were.

5 Q. And are they true and accurate to the best of
6 your knowledge and belief?

7 A. They are.

8 Q. You also have with you February 28, 2013
9 Supplemental Prefiled Testimony of Michael J. Buscher in
10 this matter?

11 A. I do.

12 Q. And that document consists of three pages
13 together with a cover page and index; is that correct?

14 A. That's correct.

15 Q. Was that document prepared by you or under
16 your direct supervision?

17 A. It was.

18 Q. Is it true and accurate to the best of your
19 knowledge and belief?

20 A. It is.

21 Q. Are there any corrections?

22 A. There are not.

23 Q. And with your February testimony you supplied
24 a supplement to your Exhibit MJB-2 which is now marked and
25 identified with your February testimony as exhibit

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1 Petitioner's Supplemental MJB-2.1, parens 2/28/13, end
2 parens; is that correct?

3 A. That's correct.

4 Q. Was that prepared by you or under your direct
5 supervision?

6 A. It was.

7 Q. Is it true and accurate to the best of your
8 knowledge and belief?

9 A. It is.

10 Q. Are there any corrections?

11 A. There are not.

12 Q. And finally, June 28, 2013 we have
13 Supplemental and Rebuttal Testimony of Michael J. Buscher,
14 consisting of six pages together with a cover page and
15 index. Do you have that with you?

16 A. I do.

17 Q. Was that prepared by you or under your direct
18 supervision?

19 A. It was.

20 Q. And is it true and accurate to the best of
21 your knowledge and belief?

22 A. It is.

23 Q. Are there any corrections?

24 A. There are not.

25 Q. With your June testimony you have two
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1 exhibits. The first is marked exhibit Petitioner's Supp.
2 MJB-2.2, with a revision date of 6/28/13, as well as
3 exhibit Petitioner's Supp. MJB-2.2 Appendix A, with a
4 revision date of 6/28/13. Do you have those?

5 A. I do.

6 Q. And were both of those documents prepared by
7 you or under your direct supervision?

8 A. They were.

9 Q. Are they true and accurate to the best of your
10 knowledge and information?

11 A. They are.

12 Q. Are there any corrections?

13 A. There are not.

14 MS. HAYDEN: I move the admission of the
15 prefiled testimony and exhibits just
16 described of Michael J. Buscher.

17 CHAIRMAN VOLZ: I'm sorry. Any
18 objection?

19 (No response.)

20 CHAIRMAN VOLZ: They are admitted.

21 (Exhibits marked Petitioner's MJB-1 and
22 2, Supp. MJB-2.1 (2/28/13), Supp. MJB-2.2
23 (6/28/13), and MJB-2.2 Appendix A were
24 admitted into the record.)

25 (The Prefiled Testimony of Michael J.
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Buscher was admitted into the record.)

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1 CHAIRMAN VOLZ: Okay. So Mr. Buscher is
2 available for cross examination?

3 MS. HAYDEN: He is, I'm sorry. Yes.

4 CHAIRMAN VOLZ: All the lawyers have
5 been failing to say that all day or all
6 week, and it's very helpful that I know that
7 you're done by having you say that.

8 MS. HAYDEN: Thank you. I appreciate
9 that, especially because we have live
10 surrebuttal. I apologize.

11 CHAIRMAN VOLZ: Thank you. Mr. Palmer,
12 I think you signed up for some cross
13 examination.

14 MR. PALMER: Just a couple.

15 CHAIRMAN VOLZ: Okay.

16 CROSS EXAMINATION

17 BY MR. PALMER:

18 Q. Mr. Buscher, were you on the site visit on
19 September 10?

20 A. I was not.

21 Q. You had stated in your rebuttal testimony that
22 you still believe removal of the vegetation would not
23 create an adverse impact from public views?

24 A. That's correct.

25 Q. You did concur that the change could have an
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1 adverse effect on the Palmers' residence?

2 A. That is correct.

3 Q. You then go on to recommend removal of all of
4 our willows and offer up some different plantings after
5 construction to provide similar screening.

6 Could you explain how you would go about
7 replanting that area so that it will not have an adverse
8 impact afterwards? And when it comes to replanting that
9 you bear in mind the two mature trees that are on the
10 lawn, the Elms look like they are about to succumb to
11 Dutch Elm disease. So when that happens we are basically
12 going to lose about 80 percent of our trees in that area
13 on the property. And at present, the west lawn is about
14 the only possible site for a new septic system.

15 So how would you see replanting that so that
16 we would have a decent screening still?

17 A. I have not specifically looked at the property
18 as far as coming up with any type of a proposed planting
19 plan. My recommendation would be to have Vermont Gas
20 coordinate a meeting with yourself, and we would meet on
21 the property and discuss various potentials, any type of
22 proposed planting that would best meet needs and
23 expectations.

24 Q. One other issue that I had, there is a map
25 here, exhibit Petitioner -- exhibit Petitioner Surr. EMS-

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1 1. Is that available that he can see that?

2 MS. HAYDEN: Yes. Thank you. I was
3 just going to hand it to him.

4 BY MR. PALMER:

5 Q. There is also a hedgerow I'm concerned about
6 that's between our farm and the Norma Norris's farm. Are
7 you able to pick that up, or do I need to come and show it
8 to you?

9 A. If you give me one second to try to orient
10 myself here. I'm oriented, but I don't see a property
11 owner's designated on here. I would need some --

12 Q. Can I step forward and show you?

13 CHAIRMAN VOLZ: Sure. That's fine.

14 BY MR. PALMER:

15 Q. There is Norma's property here. This is ours.
16 There is a hedgerow here. It's approximately 1,600 feet
17 long which is going to be within the area of where the
18 trenching will go.

19 A. Okay.

20 Q. That's the area I would like to discuss. Now
21 that farm creates a buffer between the two farms, and we
22 work on an organic principle, if she doesn't, and this is
23 also a habitat for wildlife and it sucks up a lot of water
24 that comes from one farm to the other.

25 Could you explain to me if eliminating that
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1 hedgerow would have an adverse impact on the flow of water
2 and the buffering area?

3 A. Flow of water is outside the area of my
4 expertise. Could you repeat the second part of the
5 question?

6 Q. Well I'm wondering if it would have an effect
7 on the habitat, and if you have any knowledge as to
8 whether that would affect the buffer zone created between
9 one farm and another?

10 A. Again these are areas outside of my realm of
11 my testimony.

12 Q. All right. Thank you very much.

13 MR. COEN: Mr. Buscher, have you visited
14 this property?

15 THE WITNESS: I visited it from the
16 public roadways.

17 MR. COEN: How much time did you spend
18 looking at it?

19 THE WITNESS: Between myself and other
20 staff at the office, we have made no less
21 than three visits to the site. Maybe 15
22 minutes each visit.

23 CHAIRMAN VOLZ: By the site you mean
24 this location of Mr. Palmer's farm?

25 THE WITNESS: This location. The
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1 general crossing of Rotax Road.

2 CHAIRMAN VOLZ: Okay.

3 MR. COEN: Thank you.

4 CHAIRMAN VOLZ: The Vermont Fuel Dealers
5 Association, Mr. Cota signed up. Wait a
6 minute. I'm in the wrong one. Department
7 has signed up for some cross examination.

8 MS. PORTER: Thank you, Mr. Chairman.
9 We no longer have questions for Mr. Buscher.

10 CHAIRMAN VOLZ: All right. Go ahead,
11 George.

12 MR. YOUNG: Good afternoon, Mr. Buscher.
13 Just a couple things. The main thing I
14 wanted to ask, Mr. Raphael has proposed what
15 he states are more appropriate planting
16 schemes that better fit the situation and
17 location. Have you reviewed those?

18 THE WITNESS: Yes, I have.

19 MR. YOUNG: Do you agree with him?

20 THE WITNESS: We have agreed to alter
21 the planting plans based on those
22 recommendations which is reflected in the
23 last set of plans submitted on 6/28.

24 MR. YOUNG: So your June 28 testimony
25 fully accounts for Mr. Raphael's concerns?
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1 THE WITNESS: It does.

2 MR. YOUNG: Okay. And VGS is committed
3 to meet those?

4 THE WITNESS: Yes.

5 MR. YOUNG: That's it. Thank you.

6 CHAIRMAN VOLZ: Great. Any follow up to
7 our question?

8 MR. COEN: Any redirect?

9 CHAIRMAN VOLZ: Any redirect. Sorry.

10 REDIRECT EXAMINATION

11 BY MS. HAYDEN:

12 Q. The only redirect I have, Mr. Buscher in
13 response to Mr. Young's question, I don't know if it was
14 clear for the record what you were agreeing to. Is
15 Vermont Gas fully agreeing to the recommendations of Mr.
16 Raphael concerning having sensor lighting at the gate
17 stations?

18 A. Yes, I believe so.

19 Q. Okay. And so that supplemental report that
20 was filed by Mr. -- I'll withdraw that.

21 CHAIRMAN VOLZ: Okay. No more redirect?

22 MS. HAYDEN: No more redirect.

23 CHAIRMAN VOLZ: Any other questions?

24 (No response.)

25 CHAIRMAN VOLZ: Thank you, Mr. Buscher.
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1 You're excused.

2 THE WITNESS: Thank you.

3 CHAIRMAN VOLZ: Now we are up to Mr.

4 Raphael I think.

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1 DAVID RAPHAEL

2 Having been duly sworn, testified
3 as follows:

4 MR. COEN: Please state your name for
5 the record.

6 THE WITNESS: My name is David Raphael.

7 DIRECT EXAMINATION

8 BY MS. PORTER:

9 Q. Good afternoon, Mr. Raphael. Could you state
10 your occupation please?

11 A. Yes, I'm a landscape architect and a planner.

12 Q. Do you have in front of you a document
13 entitled Prefiled Direct Testimony of David Raphael dated
14 June 14?

15 A. Yes, I do.

16 Q. And was that prepared by you or under your
17 direct supervision?

18 A. Yes, it was.

19 Q. And is it true and accurate to the best of
20 your knowledge?

21 A. Yes, it is.

22 Q. Do you have any changes or corrections to make
23 to it?

24 A. No, I do not.

25 Q. Are there any exhibits attached to that
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1 document?

2 A. Yes. I don't know if this is -- the report is
3 an exhibit?

4 Q. This would be your initial prefiled.

5 A. No. There are no exhibits attached. Excuse
6 me. Sorry.

7 Q. Do you also have in front of you your prefiled
8 Supplemental Direct Testimony of David Raphael dated July
9 17?

10 A. Yes, I do.

11 Q. And attached to it is there an exhibit marked
12 DPS-DR-1?

13 A. Yes. There is.

14 Q. And were each of these prepared by you or
15 under your direct supervision?

16 A. Yes, it was.

17 Q. Are they true and accurate to the best of your
18 knowledge?

19 A. Yes, they are.

20 Q. And are there any changes or corrections to
21 make?

22 A. Not that I'm aware of. No.

23 MS. PORTER: I would move the admission
24 of each of those documents.

25 CHAIRMAN VOLZ: Any objection?
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1 MR. SCIARROTTA: No.

2 CHAIRMAN VOLZ: They are admitted.

3 (Exhibit DPS-DR-1 was

4 admitted into the record.)

5 (The Prefiled Testimony of David Raphael
6 was admitted into the record.)

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1 MS. PORTER: Mr. Raphael is available
2 for questions.

3 CHAIRMAN VOLZ: Okay. Vermont Gas?
4 Cross for him?

5 CROSS EXAMINATION

6 BY MS. HAYDEN:

7 Q. Mr. Raphael, on the second to the last page of
8 your report which is your exhibit to -- I'm sorry. It's
9 not the second to last page. It's page nine. At the
10 bottom.

11 A. Yes.

12 Q. You make a recommendation that at the gate
13 stations they be lighted with motion sensor activated
14 lights, do you see that?

15 A. Yes, I do.

16 Q. If having motion activated lights became a
17 concern for the community, adjacent landowners, or the
18 town, and those concerns were made known to Vermont Gas,
19 would you have a concern about not having motion sen --
20 motion activated lighting?

21 A. No. I think -- an alternative certainly would
22 be a human activated light.

23 Q. Thank you.

24 CHAIRMAN VOLZ: Mr. Palmer, do you have
25 some questions?

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1 MR. PALMER: Yes.

2 CROSS EXAMINATION

3 BY MR. PALMER:

4 Q. Afternoon, Mr. Raphael.

5 A. Good afternoon.

6 Q. You state in your testimony that siting a
7 pipeline within the VELCO right of way is a preferred
8 approach when considering aesthetics, land use impacts, as
9 it eliminates the need for acquiring and developing new
10 utility corridors, collocation of utilities is always
11 desirable as it tends to minimize impacts overall.

12 Is this still your position on siting this
13 pipeline?

14 A. In general, yes. I do believe it is
15 preferable rather than creating new corridors to try and
16 use existing corridors.

17 MR. PALMER: Thank you. That's all I
18 had.

19 CHAIRMAN VOLZ: Thank you.

20 MR. YOUNG: Good afternoon, Mr. Raphael.

21 THE WITNESS: Good afternoon.

22 MR. YOUNG: Let me turn you first to
23 your direct testimony. Page eight. You
24 describe what you characterize as a wait and
25 see approach to screening.

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1 Can you give me some examples of what
2 you're thinking about that and how that
3 would work?

4 THE WITNESS: Sure. This is a process
5 that I think we have sort of de facto
6 employed in other similar projects whereby
7 during the construction process it's often
8 difficult to anticipate the extent of
9 vegetative loss from the clearing, from the
10 construction. And therefore, it's hard to
11 predict or plan for replacement of any lost
12 vegetation in that regard in advance.

13 So I think an alternative, an
14 appropriate alternative is to have, as I've
15 suggested in my testimony, a post-
16 construction review process whereby the
17 applicant would agree to review with the
18 appropriate parties, including the Board, of
19 course, the resulting changes to any
20 buffers, any screening, any existing
21 vegetation, and to determine whether post
22 construction some of the loss of vegetation
23 can be addressed with new planting or some
24 other methodology to provide some degree of
25 mitigation.

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1 MR. YOUNG: So I mean are you thinking
2 that there would be a general CPG condition
3 that said, you know, after construction VGS
4 shall engage in a process, and then the
5 Board would be essentially the arbiter of
6 any disputes as to what the appropriate
7 screening was?

8 THE WITNESS: Yes.

9 MR. YOUNG: Okay. One of the reasons I
10 was curious is because at line 12 of your
11 testimony you said this needs to be
12 addressed before the CPG. And I was trying
13 to figure out how to mesh this wait and see
14 with address before the CPG.

15 THE WITNESS: In that regard I think the
16 intent of that statement was to pose that to
17 the applicant, and have some assurance that
18 the applicant would be willing to do that
19 rather than to bring it out of the blue and
20 propose it at this time. It was something
21 that we discussed prior to the submission of
22 my testimony and subsequent exhibits. And
23 the -- I think, as it states in my
24 supplemental testimony or initial testimony,
25 that the Vermont Gas Systems has agreed to
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1 that in principle.

2 MR. YOUNG: Okay. Next, page eight of
3 your report. You state that VGS should
4 commit to post-construction monitoring of
5 sound.

6 THE WITNESS: Correct.

7 MR. YOUNG: I'll give you a second.
8 Jump to your report. Has the company done
9 so to your knowledge?

10 THE WITNESS: Done post-construction
11 monitoring?

12 MR. YOUNG: No. Committed to doing so.
13 Committed to post-construction monitoring of
14 sound.

15 THE WITNESS: I don't know if they have
16 committed specifically to post monitoring.
17 I think they are committed to ensuring that
18 a sound level selected is appropriate for
19 the use, and certainly I would expect and
20 certainly recommend that that be tested post
21 construction.

22 MR. YOUNG: Now in your -- in that
23 paragraph you also cite to a decibel level
24 at surrounding residences of 55 dB; correct?

25 THE WITNESS: Correct.
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1 MR. YOUNG: Am I correct that the Board
2 for a number of wind facilities has used a
3 measurement of 45 dB at local residences?

4 THE WITNESS: Correct, for nighttime
5 sound levels, I believe. Yes.

6 MR. YOUNG: Is there any reason that you
7 would recommend 55 rather than 45 in that
8 case?

9 THE WITNESS: Well actually -- well for
10 one, the difference I think in my testimony
11 is that I made the statement here that it be
12 at the fence line of the project site rather
13 than at the property line. However, with
14 that in mind, I have no objection to
15 following previously set precedent by the
16 Board for acceptable sound levels both
17 daytime and nighttime at the residences, the
18 nearest property residences.

19 MR. YOUNG: And I will say I became a
20 little confused. Your sentence actually
21 says 50 dB at the fence line, but then you
22 go on to say the sound at the residences
23 doesn't exceed 55. And I was -- which seems
24 counter intuitive.

25 THE WITNESS: Right. And that's why I
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1 think it's good to have this opportunity to
2 clarify that. And again, I think the notion
3 of a sound level at 55 at the nearest
4 residence for daytime sound levels and 45
5 for nighttime sound levels is a reasonable
6 and appropriate level to set for this
7 project.

8 MR. YOUNG: Already addressed my other
9 question. Thank you very much.

10 THE WITNESS: You're welcome.

11 CHAIRMAN VOLZ: Any follow up to our
12 questioning? Any redirect?

13 MS. PORTER: One quick matter.

14 REDIRECT EXAMINATION

15 BY MS. PORTER:

16 Q. Mr. Raphael, were you here a few moments ago
17 when Mr. Buscher suggested that -- post construction that
18 the company go out to the Palmer property and look at the
19 situation then and determine appropriate mitigation?

20 A. Yes. I was.

21 Q. And would you concur with that recommendation?

22 A. Absolutely. Yes.

23 MS. PORTER: Thank you.

24 CHAIRMAN VOLZ: Thank you. You're

25 excused.
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1 THE WITNESS: Thank you.

2 CHAIRMAN VOLZ: Ready for your next
3 witness? Mr. Kumar I think.

4 MR. PALMER: Mr. Chairman, my witness
5 Heather Darby is here, and she has a small
6 child in tow. Would she be able to go next
7 possibly?

8 CHAIRMAN VOLZ: Sure. I think that
9 would be fine.

10 MR. PALMER: Thank you.

11 CHAIRMAN VOLZ: Why don't we do that.
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HEATHER M. DARBY

Having been duly sworn, testified
as follows:

MR. COEN: Would you state your name for
the record?

THE WITNESS: My name is Heather Darby.

MR. COEN: Thank you.

DIRECT EXAMINATION

BY MR. PALMER:

Q. This is my witness Heather Darby. Could you
state your occupation and purpose of your testimony here
today?

A. Yes. My name is Heather Darby, and I'm a Soil
and Nutrient Management Specialist, an Agronomist. I work
for the University of Vermont Extension.

The purpose of my testimony today was that I
was specifically asked to report on how implementing
pipeline or pipeline construction could impact the health
and quality of the soil --

Q. And I believe that was --

A. -- on organic production and other production
as well.

MR. PALMER: And I believe my witness is
ready.

CHAIRMAN VOLZ: Thank you. I don't know
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1 if we already admitted her testimony earlier
2 when we did everybody's. No, we didn't.

3 You prepared some testimony on June 13,
4 2013; is that correct?

5 THE WITNESS: Yes, sir.

6 CHAIRMAN VOLZ: Is it true and accurate
7 to the best of your knowledge and belief?

8 THE WITNESS: Yes, sir.

9 CHAIRMAN VOLZ: Is there any objection
10 to admitting that testimony?

11 MS. HAYDEN: No objection.

12 CHAIRMAN VOLZ: It's admitted.

13 (The Prefiled Testimony of Heather Darby
14 was admitted into the record.)
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1 CHAIRMAN VOLZ: So at this point my
2 understanding was the parties had no
3 questions for this witness.

4 Do we have some?

5 MR. YOUNG: We have a few. Let me turn
6 first to answer seven of your testimony.
7 And you're talking here about soil
8 compaction.

9 THE WITNESS: Yes.

10 MR. YOUNG: And you state dry soil
11 conditions would ultimately lead to less
12 soil compaction especially in clay soil;
13 correct?

14 THE WITNESS: Yes, sir.

15 MR. YOUNG: Would you recommend that --
16 in farming areas that the Board adopt a
17 condition either requiring or, you know,
18 requiring that the soil be kept dry where
19 possible to mitigate that concern?

20 THE WITNESS: Absolutely. One of the
21 major issues that we have with clay soils in
22 all types of production is that they are so
23 easily compacted.

24 There is very little -- I guess there is
25 very little wiggle room between what we call
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1 plastic and friable soil conditions, which
2 when a soil is plastic it's able to be
3 molded. And when a soil is plastic in that
4 stage of wetness and a little bit wetter
5 than that, you can cause severe, severe
6 compaction to those soils, especially clay
7 soils, because they have really high surface
8 area. They are very small parcels, and
9 there is very little space between them.

10 So when equipment is run over them, even
11 cattle, for example, you can cause severe
12 compaction because they squish together
13 really easily. When the soil moves into the
14 friable stage you essentially can break that
15 up really easily, and that's when the
16 conditions are best for any type of tillage
17 or sort of obstruction of the soil. So yes,
18 I would highly recommend that.

19 MR. YOUNG: And that's -- would that be
20 on all farm lands or the particular areas of
21 concern --

22 THE WITNESS: Of course, ideal
23 conditions for any kind of activity on lands
24 would be during that friable soil condition.

25 And that when the soil's friable again
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1 depends on the type of soil or the texture
2 of the soil. And clay soils usually take
3 longer to move into the friable stage
4 because of the nature of those soils versus
5 a sandy soil.

6 You know, if you go to the beach and it
7 rains, the soil dries out relatively
8 quickly. If there was nothing but clay
9 there, it would be a mess, probably for
10 three days before you could go back and play
11 in the clay. And it's very much the same in
12 agricultural soils.

13 So of course, my recommendation would be
14 because I am a soil specialist, is that no
15 one go on agricultural soils unless they are
16 in the friable stage because that's when
17 you're going to have the least impact on the
18 condition of the soil.

19 Does that answer your question?

20 MR. YOUNG: No. I think you answered my
21 question. And I'm grappling with the next
22 question, you're sort of laying in an ideal
23 state, and I'm trying to produce what's the
24 most practical outcome of that. Because
25 what you just stated was you would prefer
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1 nobody go on, and obviously that can't
2 happen in a state where it rains.

3 THE WITNESS: It becomes difficult
4 always to manage soils when work has to be
5 done. And when you're not necessarily given
6 a choice. So for example, in a condition
7 where someone's livelihood depends on
8 getting the soil prepared and ready for
9 hayng or planting, let's say from an
10 agricultural perspective, because their
11 livelihood is at stake, then oftentimes
12 someone may have to go on the soils in those
13 adverse conditions, because again, their
14 livelihood is at stake.

15 But no one chooses to do that under
16 other conditions. There is no point to
17 doing it.

18 MR. YOUNG: Have you looked at whether
19 pipeline projects built in northern Vermont,
20 for example, or elsewhere have produced
21 adverse results on soil compaction?

22 THE WITNESS: Yeah. I personally have
23 not been involved with any projects that
24 have looked at the impact of pipelines on
25 agricultural soils in Vermont. I have only
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1 looked through the research that's available
2 in research data bases and also had
3 conversations and read research results from
4 New York, which has similar soils to
5 Vermont.

6 MR. YOUNG: And in looking at those
7 research results were there any of those
8 that happen to look at pipeline construction
9 or that type of project?

10 THE WITNESS: Yes. All of the research
11 papers I specifically looked at in my
12 testimony did look at pipeline construction.
13 Admittedly several of those were older
14 experiments, so my assumption is that given
15 that we live in a different time that your
16 practices have probably changed hopefully
17 based on that research, because it was
18 fairly negative in terms of the impact that
19 pipeline construction had on agricultural
20 productivity.

21 The most recent work that was conducted
22 was conducted by Cornell University by
23 Harold Vanesse and Robert Shindelbeck
24 (phonetic), and they essentially have a test
25 that they developed, maybe -- I want-- I
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1 can't say specifically, but it was five to
2 eight years ago, that measures the health of
3 the soil. It's one of the only commercial
4 tests that I know of available in this
5 country where a farmer can actually take a
6 sample of their soil and send it in and have
7 the health and the quality tested and they
8 receive an entire report card on their soil.

9 Currently a farmer can actually -- most
10 farmers can only obtain nutrient testing, so
11 they know the nutrients of their soil, but
12 they don't actually know the physical
13 condition which we are concerned about in
14 this case, and also the biological condition
15 which we are also concerned about.

16 So what these scientists did was they
17 were actually trying to promote using this
18 soil health test in the case of pipeline
19 construction so that they could actually
20 monitor, as someone I think mentioned
21 before, how the soil recovers, and if the
22 mitigation strategies being used are really
23 effective, especially from an agricultural
24 standpoint. They looked at one soil type
25 that was actually a lighter textured soil.

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1 And they looked at three different types of
2 mitigation strategies; one which they termed
3 aggressive, one which they termed not very
4 aggressive, and -- so only two. Sorry.

5 And then they looked at those under
6 agricultural land, what they call fallow
7 land, as well. And what they found was that
8 with really aggressive mitigation they were
9 able to sort of bring the soil back into
10 production relatively quickly. But that was
11 under ideal conditions. It was an extremely
12 dry year, so there was very little rain
13 during the time of pipeline construction.
14 And it was also on a light textured soil
15 that would not have the same issues in terms
16 of compaction.

17 So I think the potential is there to
18 minimize the impact of pipeline
19 construction, but as we mentioned earlier,
20 there is certain weather and soil conditions
21 that need to be happening at the same time.

22 MR. YOUNG: Well if you were going to
23 tell us -- actually I'm going to give you
24 the opportunity to tell us. What would be
25 the best approach to mitigating the types of

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1 concerns that you're raising? I mean if we
2 were, you know, to put one or two conditions
3 on this, what would you recommend?

4 THE WITNESS: Well first I would like to
5 state that any time the soil is exposed or
6 moved or disturbed, that there is an impact
7 on the soil. And that's not just in, you
8 know, that's not just in pipeline
9 construction. That's any kind of soil
10 disturbance. Especially when you look at an
11 area that maybe isn't currently being
12 disturbed.

13 So when we think about grass fields, for
14 example, that don't have really any
15 disturbance for the most part. And that's
16 in terms of opening the soil up. Because
17 once you open the soil up, it gets oxygen,
18 and then you get a sort of flush of
19 microbial activity that uses up the organic
20 material in the soil. We get high levels of
21 CO2 emissions into the atmosphere, a
22 depletion of organic matter, and then a
23 die-off of micro organisms.

24 So any time there is soil disturbance,
25 there is an impact on the soil overall. Now
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1 with that said, and this is, you know, and
2 we were going to use best management
3 practices because we need to go and do what
4 we need to do. Then my ideal conditions
5 would be to minimize the disturbance as much
6 as possible. And so how would you do that?
7 Well how can you minimize traffic flow over
8 the area? Are there specific drive rows
9 maybe that will be used? How can you
10 minimize the size of the channel? How can
11 you go on to the fields when they are in
12 this friable state and absolutely never when
13 they are in the plastic state? Because
14 that's when the absolute most destruction
15 really will happen.

16 I mean -- and you can have compacted
17 layers so deep into the soil, I'm not sure
18 how you would get equipment to loosen those
19 compacted layers. I mean it's really a
20 major concern. So I would say if the soil
21 moisture conditions are correct, and were
22 opening the soil up sort of in a very
23 minimal way.

24 MR. YOUNG: Great. Thank you very much.

25 MR. COEN: One of the options that has
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1 been talked about in terms of Mr. Palmer's
2 property has been horizontal drilling.

3 THE WITNESS: Yup.

4 MR. COEN: Do you have the same concerns
5 about that?

6 THE WITNESS: I don't know very much
7 about horizontal drilling. So I probably
8 have to educate myself a little more to be
9 able to fully answer your question. But
10 based on what I know about the impacts on
11 soil, and I'll just give you an example that
12 I think might be a little bit related. Is
13 where we go from full tillage on a farm to
14 reduced tillage, and that's what I would
15 equate it to. That it certainly is better
16 than completely opening up the soil I would
17 say. But there would still be some
18 disturbance, but it would be less than the
19 alternative.

20 MR. COEN: Well I probably know about as
21 much of it as you do, but my understanding
22 is that you have a bore that goes down 10
23 feet.

24 THE WITNESS: Yes.

25 MR. COEN: And so you would not have an
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1 opening on the top other than where the
2 drill goes in.

3 THE WITNESS: I'm assuming that you
4 wouldn't have the compaction either because
5 it would be just a piece of equipment from
6 afar drilling under.

7 MR. COEN: Right.

8 CHAIRMAN VOLZ: 10 or 15 feet under.

9 THE WITNESS: Yeah. So I think that you
10 would certainly minimize most of the
11 disturbance. But of course, you know, there
12 would still be some.

13 MR. COEN: Thank you.

14 MS. TIERNEY: I just have one quick
15 question. Ms. Darby, in your experience
16 what is the optimal depth of soil for
17 farming purposes? Is it three feet of
18 topsoil, five feet, what is it?

19 THE WITNESS: So ultimately in some ways
20 it really depends on the crop that you're
21 growing, because all crops have very
22 different rooting depths. When most soils
23 are managed, just in terms of standard
24 tillage on a farm, it's usually 6 to 12
25 inches is the standard tillage for opening
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1 up the soil. But the rooting depth even of
2 corn is generally three feet or more. And
3 the rooting depth, of course, is very
4 important in terms of how well the plant can
5 grow.

6 But probably the bigger issue with any
7 kind of compaction below that level is the
8 fact that the water movement is highly
9 impacted. And especially -- well in any
10 soil if the water can't drain down, then
11 it's going to move across. And that's going
12 to cause sort of other issues, water quality
13 issues, runoff and erosion. And also on top
14 of that it also impacts crop production
15 because they won't actually get enough
16 water. So --

17 MS. TIERNEY: Thank you. That's very
18 helpful.

19 THE WITNESS: You're welcome.

20 MR. BURKE: Ms. Darby, I have one
21 question with regard to -- I know I've said
22 one, I'm going to stick to it. With regard
23 to organics in particular. Do you have any
24 advice for us in particular as to organic
25 farming that would be impacted or endangered

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1 by the pipeline itself?

2 THE WITNESS: I am -- what I can speak
3 from is from the soils perspective. I have
4 read a little bit maybe about any potential,
5 you know, if there was a leak or if there
6 was some corrosion or something that might
7 come off the pipes. I don't know anything
8 about that. And I'm not sure how that would
9 impact. But if it did happen, obviously
10 it's a non-certified contaminant.

11 So for those of you that are not
12 familiar with certified organic production,
13 it is regulated by the USDA. So it's --
14 there are laws in place for the farmers that
15 choose to certify organic, and they must
16 follow those laws or they lose their
17 certification.

18 One of the rules is that you are not to
19 apply any prohibited substances. I don't
20 think a prohibited substance is a pipeline,
21 but I don't know. And ultimately I think
22 you would have to go to the USDA National
23 Organic Standard Board to get the answer to
24 your question.

25 MR. BURKE: Thank you.
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1 CHAIRMAN VOLZ: Any follow up to our
2 questions before we go to redirect?

3 (No response.)

4 CHAIRMAN VOLZ: Mr. Palmer, do you have
5 any follow up questions? Any redirect?

6 MR. PALMER: Yes, I did.

7 REDIRECT EXAMINATION

8 BY MR. PALMER:

9 Q. The pipe itself may not be the problem, but
10 possibly the product in the pipe could be a problem as far
11 as making yourself certified?

12 A. Yes. Yes; correct. And again ultimately I'm
13 not a certifier. There are bodies of folks out there that
14 are certifiers that come out to these farms, and there are
15 many cases that are well out of the farmer's control where
16 they lose certification. And some of those include aerial
17 spraying for mosquitos, for example. And it's very
18 problematic for producers that are certified organic.
19 They are making a living selling organic products. That
20 is their market.

21 And so when items such as that, and this might
22 be one of them as well, is out of their control, it does
23 put their viability of their farm at question. For sure.

24 Q. Would you say that the quality of the soil is
25 more sensitive in an organic situation than in

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1 conventional farming?

2 A. So one of -- I guess soil is the backbone of
3 all farms. You know, I think I'll start by saying that.
4 That if you're growing a crop, whether you're a dairy
5 farmer or a vegetable farmer, you know, you need to grow
6 crops and crops grow in soil. And if you do not take care
7 of your soil, your farm will not survive.

8 Okay. It's just that simple. So the quality
9 of the soil is very important to all farmers. And we say
10 that farmers are stewards of the land because they rely on
11 making their living from the soil. Now with that said,
12 generally most organic farmers I would say are more in
13 tune with the soil itself because they actually rely on
14 the soil nutrients cycling and biological cycles and
15 physical cycles far more than a conventional farmer has
16 to. Okay. And that's because conventional farmers have
17 more tools to supply just, for example, nutrients to their
18 crops.

19 So a conventional farmer can, if needed,
20 purchase synthetic fertilizer to boost the production of
21 their crop. If -- let's just say, for example, if a soil
22 is disturbed and the organic matter is lessened, and the
23 nutrients from the organic matter are not there to grow
24 the crop, a conventional farmer can go and purchase
25 fertilizer to make up that difference. An organic farmer

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1 has really only the biology and nutrient cycling in their
2 soil to rely on to provide nutrients to their crops. So I
3 would say the impact on soil and the soil biology and the
4 organic matter of that soil is -- can be much more
5 detrimental to that set of farmers, because that is the
6 primary nutrient source they rely on to grow crops.

7 So if you destroy the microbiology of the soil
8 or you lose the organic matter, then you're essentially
9 taking away the nutrient source to produce organic crops.
10 So I would say that all farmers rely on those cycles, but
11 they are far more dependent on those cycles to make a
12 living.

13 Q. So you would say that the organic farmer is a
14 more sensitive system that you're dealing with?

15 A. Yes. I would say that it's more sensitive
16 based on the fact that farmers are relying on that as
17 their primary source of nutrients. Yes. Correct.

18 Q. Would you have any recommendation as to how to
19 deal with an organic farm, would organic farming be
20 something you want to avoid putting a pipeline through
21 versus a traditional farm?

22 A. Yeah. I think it is very -- it's going to be
23 very difficult to make anyone happy in this situation.
24 And I think that, you know, maybe a conventional farmer
25 wouldn't notice the impacts as much because they are not

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1 as reliant on those systems. And they are using different
2 tools to be able to combat compaction and organic matter
3 loss. And so I do think it's going to be more difficult
4 to have these pipelines through organic farms. Because
5 they do have different challenges.

6 MR. PALMER: Thank you.

7 MR. COEN: Let me just follow up. But
8 if it's horizontally drilled 10 to 15 feet
9 below the surface, would that still impact
10 an organic farm?

11 THE WITNESS: It certainly -- most of
12 the microbial population is in the top six
13 inches of the soil. And I would say as far
14 down as 12 inches for sure. Once you're in
15 10 to 15 feet deep, you're mostly in the
16 subsoil, and what you would impact at that
17 point would be any of the physical
18 properties for the most part.

19 So if there was any adverse impacts from
20 any type of physical disturbance, which I
21 don't know so I can't say, but it would
22 certainly not impact the biology versus, you
23 know, opening it up from the top for sure.

24 MR. COEN: Thank you.

25 CHAIRMAN VOLZ: Are you all done then?
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1 MR. PALMER: Yes, I am. Thank you.

2 CHAIRMAN VOLZ: Any other follow up from
3 ours?

4 (No response.)

5 CHAIRMAN VOLZ: Okay, great. Thank you,
6 Ms. Darby.

7 THE WITNESS: Thank you very much. Have
8 a great day.

9 CHAIRMAN VOLZ: You too. I think we are
10 up to Mr. Kumar.

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JATINDER KUMAR

Having been duly sworn, testified
as follows:

MR. COEN: Please state your name for
the record?

THE WITNESS: Jatinder Kumar.

MR. COEN: Do you want to spell that for
the court reporter please?

THE WITNESS: J-A-T-I-N-D-E-R, last name
K-U-M-A-R.

MR. COEN: Thank you.

DIRECT EXAMINATION

BY MS. PORTER:

Q. Good afternoon, Mr. Kumar.

A. Good afternoon.

Q. Do you have a document -- could you state your
occupation for the record?

A. Yes, I do. I don't have any corrections.

Q. Your occupation.

A. I'm sorry. Yeah. I'm an Energy and Public
Utility Consultant, President of Economic and Technical
Consultants, Inc.

Q. You have a document in front of you entitled
Direct Testimony of Jatinder Kumar dated June 14, 2013?

A. Yes, I do.

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1 Q. And are there four exhibits attached thereto
2 that have been marked JK-1, JK-2, JK-3 and JK-4?

3 A. That is correct.

4 Q. Was the testimony and the exhibits prepared by
5 you or under your direction?

6 A. Yes.

7 Q. And are they true and accurate to the best of
8 your knowledge?

9 A. Yes.

10 Q. Do you have any changes or corrections that
11 you would like to make to these documents?

12 A. No, I don't.

13 Q. Thank you.

14 MS. PORTER: We would move the admission
15 of Mr. Kumar's testimony.

16 CHAIRMAN VOLZ: Any objections? Were
17 there exhibits did you say?

18 MS. PORTER: And exhibits.

19 CHAIRMAN VOLZ: Any objection to the
20 testimony and exhibits?

21 (No response.)

22 CHAIRMAN VOLZ: Okay. They are both
23 admitted.

24 (Exhibits marked JK-1 through JK-4 were
25 admitted into the record.)
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(The Prefiled Testimony of Jatinder
Kumar was admitted into the record.)

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1 MS. PORTER: Mr. Kumar is available for
2 questions.

3 CHAIRMAN VOLZ: All right. Mr. Palmer,
4 do you have questions for Mr. Kumar?

5 MR. PALMER: I do not at this point.

6 CHAIRMAN VOLZ: Mr. Cota, do you have
7 questions for this witness?

8 MR. COTA: No questions.

9 CHAIRMAN VOLZ: Anybody else? Nobody
10 else signed up. Do you have some?

11 MR. YOUNG: Just a couple.

12 CHAIRMAN VOLZ: Okay.

13 MR. YOUNG: Good afternoon, Mr. Kumar.

14 THE WITNESS: Good afternoon.

15 MR. YOUNG: Let me get you to move to
16 page 21 of your testimony please.

17 THE WITNESS: Yes, sir.

18 MR. YOUNG: At the bottom here you state
19 that the Board should only evaluate the
20 reasonableness of the facilities development
21 agreement with IP only when Vermont Gas
22 seeks to recover the costs in rates or
23 submits a Section 248 for the line to
24 International Paper; is that correct?

25 THE WITNESS: Yes.
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1 MR. YOUNG: Is it the Department's view
2 that the project should be approved even if
3 the International Paper line is not built?

4 THE WITNESS: Yes.

5 MR. YOUNG: And in reaching that
6 conclusion, did you evaluate the financial
7 analysis that Vermont Gas had done in terms
8 of the -- essentially the revenue stream
9 associated with this relative to cost?

10 THE WITNESS: Yes, sir.

11 MR. YOUNG: And the Department concluded
12 that that was a reasonable tradeoff.

13 THE WITNESS: Yes.

14 MR. YOUNG: At the top of page 21 you
15 recommend that the Board not approve the
16 reasonableness of any costs associated with
17 this at this time; correct?

18 THE WITNESS: That is correct.

19 MR. YOUNG: In making that
20 recommendation do you know whether that's
21 consistent with the Board's past precedent
22 for -- on the effect of a ruling under
23 Section 248?

24 THE WITNESS: That's my understanding.

25 Yes. It does not have to be specific cost
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1 in CPG filing, applications.

2 MR. YOUNG: Okay. And so you base that
3 upon prior Board decisions.

4 THE WITNESS: Yes. That's the general
5 standard also in the industry. In the
6 certification proceedings, very rarely any
7 jurisdiction approves the cost of the
8 project, even the rate making treatment of
9 the project. It has been done, but very
10 rarely.

11 MR. YOUNG: Those are the only questions
12 I had. Thank you.

13 CHAIRMAN VOLZ: Any follow up to our
14 questions?

15 (No response.)

16 CHAIRMAN VOLZ: Any redirect?

17 MS. PORTER: No, sir.

18 CHAIRMAN VOLZ: Thank you, Mr. Kumar.
19 You're excused.

20 THE WITNESS: Thank you, sir.

21 CHAIRMAN VOLZ: I think we are up to Mr.
22 Sorenson.

ERIC SORENSON

Having been duly sworn, testified
as follows:

MR. COEN: Please state your name for
the record.

THE WITNESS: Eric Sorenson.

MR. COEN: Thank you.

DIRECT EXAMINATION

BY MS. DILLON:

Q. Mr. Sorenson, do you have before you a
document entitled Mr. Sorenson Direct Testimony?

A. Yes, I do.

Q. And did you prepare that testimony?

A. Yes, I did.

Q. And is the information contained in the
testimony true and accurate to the best of your knowledge?

A. Yes, it is.

Q. And with your direct testimony did you prepare
an exhibit? Did you have an exhibit, your resume?

A. Oh, yes. My resume. I did.

Q. And is that resume ANR ES-1?

A. Yes.

MS. DILLON: I move the admission of Mr.
Sorenson's direct testimony and exhibit ANR
ES-1.

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CHAIRMAN VOLZ: Any objection?

(No response.)

CHAIRMAN VOLZ: They are admitted.

(Exhibit ANR-ES-1 was
admitted into the record.)

(The Direct Prefiled Testimony of Eric
Sorenson was admitted into the record.)

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1 BY MS. DILLON:

2 Q. And Mr. Sorenson, did you also prepare
3 rebuttal testimony?

4 A. Yes, I did.

5 Q. And is that rebuttal testimony dated August
6 14, 2013?

7 A. That's correct.

8 Q. And is the information contained in the
9 rebuttal testimony true and accurate to the best of your
10 knowledge?

11 A. Yes, it is.

12 MS. DILLON: I move the admission of Mr.
13 Sorenson's rebuttal testimony.

14 CHAIRMAN VOLZ: Any objection?

15 (No response.)

16 CHAIRMAN VOLZ: It's admitted.

17 (The Rebuttal Prefiled Testimony of Eric
18 Sorenson was admitted into the record.)
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1 MS. DILLON: Mr. Chairman, during the
2 morning conference I asked Mr. Young if it
3 would be appropriate to do some brief live
4 surrebuttal with Mr. Sorenson going over the
5 MOU. Would that be helpful?

6 CHAIRMAN VOLZ: That would be fine.
7 Yes. Why don't you do that.

8 BY MS. DILLON:

9 Q. Mr. Sorenson, since the time that you prepared
10 your rebuttal testimony, has the Agency of Natural
11 Resources entered into an MOU with the Petitioner Vermont
12 Gas?

13 A. Yes. We have.

14 Q. And have you -- were you involved in the
15 negotiations connected with the MOU?

16 A. Yes.

17 Q. And are you familiar with the MOU?

18 A. Yes, I am.

19 Q. Okay. And is the MOU represented as exhibit
20 Petitioner exhibit VGS-ANR-Joint-1?

21 A. Yes, it is.

22 Q. Okay. I would like to go through briefly the
23 significant natural communities that you identified and
24 had concerns with specifically in your rebuttal testimony
25 and go through how the MOU addresses those concerns.

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1 A. Okay.

2 Q. Okay. The first significant natural community
3 identified is the Pine, Oak, Heath Sandplain Forest?

4 A. That's correct. I think the big change as a
5 result of the MOU is that the majority of the Pine, Oak,
6 Heath Sandplain Forest or sandplain forest will be crossed
7 with directional -- horizontal directional drilling with a
8 joint in that directional drilling centered on the VELCO
9 power line.

10 In addition to that, there is a new vegetation
11 management type for this crossing that involves no service
12 vegetation management other than maintaining a walking
13 path and a staked area to locate the pipe.

14 There is a mitigation parcel that's being
15 considered for acquisition to offset the impacts from the
16 -- mostly from the temporary disturbance associated with
17 that joint of the middle of the HDD along the VELCO line
18 where somewhere between three quarters of an acre to an
19 acre will be cleared.

20 And I think that's the majority of it. It was
21 a substantial change in the amount of impacts associated
22 with that.

23 Q. Okay. And as a result of the horizontal
24 directional drilling, the changes in the vegetation
25 management, and the proposed mitigation parcel, will the
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1 impacts from the Vermont Gas project result in an undue
2 adverse impact to the Pine, Oak, Heath Sandplain Forest?

3 A. No, I think there is still an adverse impact,
4 but I would say it's not undue.

5 Q. Moving on to the next community which is the
6 Wet Clayplain Forest.

7 A. Right. There is a Wet Clayplain Forest at the
8 Laplatte River.

9 Q. Okay.

10 A. This one there hasn't been a lot of change to.
11 This one is being crossed with an open trench at the edge
12 of the VELCO right of way. The biggest change is in the
13 vegetation management where now there will be only
14 overhanging trees and trees with interfering roots will be
15 cut. So it's a reduction -- this is a narrow area, a
16 small area, so it's a reduction in the amount of impact.

17 Q. The next change is with respect to the actual
18 crossing at the Laplatte River. Has the management been
19 addressed there or changed there?

20 A. Yes. Yes, it is. That's one of the riparian
21 areas, and in the riparian areas now, oh boy, Laplatte
22 River, I think that's HDD. Let me just check. It's hard
23 for me to keep track of all the different treatments.

24 Right. The Laplatte River crossing is with
25 HDD which is separate from the Clayplain that's at the
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1 Laplatte River, and that HDD crossing in riparian areas
2 now, like all the other riparian area crossings, will have
3 no surface vegetation management other than what is
4 required to maintain the VELCO right of way is open. So
5 that's a reduction in the amount of long-term vegetation
6 management.

7 Q. Okay. Thank you. The next area is the Wet
8 Clayplain Forest south of Lewis Creek in Hinesburg.

9 A. Right. This one there is not much change
10 since the agreement. This one is being directionally
11 drilled. And so the only significant change is less
12 surface vegetation management over the section that's
13 directionally drilled.

14 Q. And when you say directionally drilled, that's
15 the horizontally directionally drilled?

16 A. HDD, horizontal directional drill. That's
17 correct.

18 Q. The next area is the Wet Clayplain Forest
19 south of Rotax Road in Monkton.

20 A. This is one where as it's currently laid out,
21 the project -- and based on a photo simulation -- the
22 project will miss the significant natural features, the
23 natural communities there. And I think that's going to be
24 field verified once the project starts. With those
25 changes or with that agreement, I don't expect any impact

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1 to the Red Maple -- the Red Maple Swamp there or the
2 adjacent Clayplain Forest.

3 Q. Does the MOU provide any contingency if the
4 currently proposed pipeline route overlaps with a feature?

5 A. If it does overlap, if it's found to overlap,
6 the pipeline would be moved to avoid it.

7 Q. Okay. The next area is the Mt. Florona Swamp,
8 Northern White Cedar Swamp?

9 A. The Northern White Cedar Swamp is a swamp
10 adjacent to VELCO right of way. That's part of the larger
11 Mt. Florona Swamp complex. Being adjacent to the right of
12 way, one of the new vegetation management treatments will
13 reduce the amount of clearing and only provide for removal
14 of trees with roots that interfere with the pipeline.

15 The larger Mt. Florona Swamp itself can be
16 completely crossed with directional drilling, and the
17 pipeline would be abandoned in place if there is a failure
18 and no service vegetation management. So that one has
19 been fairly steady for awhile.

20 Q. Okay. The next area is the Red Silver Maple
21 Green Ash Swamp at the Monkton-New Haven town line?

22 A. This one -- this is one of the three that I
23 think are the largest -- have been the largest issues.
24 And this one is resolved in the MOU, I think
25 satisfactorily, by changing the vegetation management long

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1 term. It's still going to be crossed with an open trench,
2 but changing the vegetation management long term so there
3 is a much narrower area of long-term vegetation
4 management.

5 And because this is such a big and important
6 swamp, there is also -- and because there is going to be
7 trenching through it, there is work to acquire a nearby
8 property that would provide connectivity between this
9 large swamp and the uplands to the east, which I think
10 significantly helps to offset impacts.

11 Q. Have the construction techniques changed with
12 respect to this area as well? Are the limits of
13 construction --

14 A. That's right. There is a reduction typically
15 with what's been called a 2-D type of construction. There
16 is a -- at the west side of the VELCO right of way there
17 is clearing of 10 foot of forest, existing forest. That's
18 allowed to grow back.

19 In this particular case, Vermont Gas is
20 working to use more of the VELCO right of way to avoid
21 clearing that 10 foot of forest.

22 Q. So under the MOU they wouldn't -- wouldn't
23 need to clear that additional 10 feet?

24 A. That's correct.

25 Q. And that's a change or reduction in the
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1 impacts?

2 A. It is. That is a reduction.

3 Q. And the next community is the Wet Clayplain
4 Forest, Northern White Cedar Swamp, Little Otter Creek in
5 New Haven. That location?

6 A. Right. This is one we saw from Rotax Road
7 during the -- I'm sorry, from Plank Road during the field
8 trip. The distinct feature on this one is that the cedar
9 swamp has some deeper peat, and the rest of it is clay
10 soil, and there is a Little Otter Creek crossing.

11 This one now under the MOU instead of being an
12 open trench and dewatering the creek would be all through
13 horizontal directional drilling from the agricultural
14 field to the north to south of Plank Road.

15 Q. So have there been changes with respect to
16 invasive species monitoring in the Vegetation Management
17 Plan? Or additional changes?

18 A. I'm just trying to remember what the changes
19 have been. I'm sorry. I'm drawing a blank. I cannot
20 remember what they are right now.

21 Q. Are you satisfied with the invasive species
22 monitoring plan that's incorporated into the Vegetation
23 Management Plan which is Attachment 1 to exhibit
24 Petitioner VGS-ANR-Joint-1?

25 A. Yes, I am. And some of the things that have

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1 changed are including provisions for monitoring and
2 invasive species in areas that are what we call --
3 consider contiguous forest, areas of forest where the
4 pipeline would go through an area that is not cleared at
5 this point, so to -- including monitoring those areas.
6 And the monitoring period for the veg -- invasive species
7 plan is a good one, I think. It's an -- up to a five-year
8 period, with the ability to end the monitoring and control
9 after three years if no invasive species are found.

10 Q. Okay. So with the changes to the construction
11 techniques and the vegetation management, has your opinion
12 changed with respect to the potential impacts of the
13 project on the significant natural communities?

14 A. Yes. It has.

15 Q. What is it?

16 A. I think -- I can apply this to all of the
17 natural communities, that there is still an adverse effect
18 on all of them, I think. But I think in all cases because
19 of mitigation steps, I'm comfortable saying that impact is
20 now not undue.

21 MS. DILLON: I have nothing further.

22 CHAIRMAN VOLZ: Thank you. According to
23 my sheet CLF had signed up for some cross
24 for this witness. Would you like some
25 opportunity to cross?

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1 MS. LEVINE: Yes.

2 CHAIRMAN VOLZ: Great. Go ahead.

3 CROSS EXAMINATION

4 BY MS. LEVINE:

5 Q. Good afternoon, Mr. Sorenson.

6 A. Hi.

7 Q. I have a few questions about the MOU. Do you
8 have that available?

9 A. Yes, I do.

10 Q. On page seven, paragraph seven of the MOU. It
11 states that the parties agree that the terms and
12 conditions of the MOU relative to wetlands shall be
13 incorporated into the Vermont Wetlands Permit and Section
14 401 Water Quality -- WQC, Water Quality Certification, for
15 the project; is that correct?

16 A. That's what it states. Right.

17 Q. And do you agree that the agreement does not
18 preclude additional requirements that may be needed to
19 protect water quality?

20 A. I don't think that's precluded, but I have to
21 add that I don't work specifically on the Wetlands Permit
22 or on the Water Quality Certification, so there are other
23 folks that can answer those questions better than me.

24 Q. Are you aware whether these permits have been
25 drafted or put out for public comment?

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1 A. I don't believe they have been drafted yet.

2 Q. Your testimony provided -- your testimony
3 provided opinions as to whether the impacts have been
4 undue or adverse to some of the natural resources; is that
5 correct?

6 A. That's correct.

7 Q. And the standard in both Section 248 and Act
8 250 is that there should be no undue adverse impact to the
9 natural resources, is that a fair characterization?

10 A. To the natural environment. Right.

11 Q. And do you agree that in terms of evaluating
12 what is undue is done relative to what other alternatives
13 could be used?

14 A. Yes. I think that's true.

15 Q. And that hasn't changed from your rebuttal
16 testimony; correct?

17 A. No. That's true.

18 Q. And one means to determine if an impact is
19 undue is to undertake an alternatives analysis; is that
20 correct?

21 A. I don't think an alternatives analysis is
22 actually required. I think it's more in the definition of
23 what's -- what is considered undue. I don't think there
24 is any specific requirement for an alternatives analysis
25 in Section 248.

1 Q. Is an alternatives analysis one way to
2 evaluate whether an impact is undue?

3 A. Yes. Yes. I think it is.

4 Q. Explain what an alternatives analysis is.

5 A. In the sense of a Wetlands Permit or Section
6 404, it has to do with looking for alternative ways that a
7 project could be built that are both practicable and
8 feasible, I think, to avoid the impacts to wetlands or
9 waters in the case of Section 404 wetlands.

10 Q. And regarding your rebuttal testimony on page
11 18, and you provided some surrebuttal testimony about the
12 impacts to the Red Maple Green Ash Swamp, as currently
13 proposed the project has not avoided the impacts to that
14 natural resource; is that correct?

15 A. That's correct.

16 Q. You reviewed the environmental impacts for
17 many projects; is that correct?

18 A. Yes.

19 Q. And you're familiar with activities that cause
20 negative natural resource impacts, and we will start
21 there.

22 A. Yes. In general. Yes.

23 Q. And suitable measures that would be needed to
24 address those impacts?

25 A. Yes.

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Q. And you've provided testimony on those sorts of matters in a number of cases?

A. Yes, a number of cases.

Q. So based on your expertise, I would like to pose a hypothetical question. Assume there is an impact from a project, for example, a project emits a harmful gas which over time has the cumulative effect of severely damaging a natural area. Do you have that in mind?

A. Yes.

Q. If that's the situation, you would agree that it would be reasonable to include measures as part of the proposed project to address those negative impacts?

MS. DILLON: I would just add a slight objection. Mr. Sorenson's resume is -- has been admitted, and although he is an expert in evaluating wetland significant natural communities, I'm concerned that the question touches on some air emissions issues which Mr. Merrill is the witness that ANR has identified to address those types of questions. So I don't know if Mr. Sorenson can offer a response, but if that's the question that's posed, Mr. Merrill might be the appropriate person for that question.

CHAIRMAN VOLZ: Ms. Levine, do you have
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1 a response?

2 MS. LEVINE: Mr. Sorenson has been
3 offered as the witness to address both the
4 mitigation measures as well as the
5 Memorandum of Understanding. It's a
6 hypothetical question about a general
7 environmental impact and how that would be
8 addressed. If he can't answer it as an
9 expert, he can say so.

10 CHAIRMAN VOLZ: We agree with that.
11 Overruled.

12 THE WITNESS: Could you repeat the
13 question please?

14 BY MS. LEVINE:

15 Q. Do you have the assumption in mind?

16 A. Yes. I have the assumption.

17 Q. So based on that assumption, you would agree
18 that in those circumstances it would be reasonable to
19 include measures as part of a proposed project to address
20 those negative impacts?

21 A. I think our role in ANR for reviewing projects
22 like this is any time we observe an impact to the natural
23 environment that's negative we look for offsetting
24 measures.

25 Q. And part of your work focuses on addressing
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1 the impacts of climate change and protecting resources
2 from those impacts?

3 A. It does in the sense -- mostly in the sense of
4 landscapes. Landscapes as they -- as they respond to
5 climate, or species as they respond to climate. Climate
6 change.

7 Q. And you would agree that the natural areas
8 you've identified in your testimony regarding this project
9 will be negatively affected by climate change going
10 forward?

11 A. I don't know. I think climate change effects
12 on individual natural communities are complicated, and
13 difficult to say yes or no there will be an impact. I
14 could offer opinions on each of the natural community
15 types and which are more likely or less likely to be
16 affected by climate change, but it's a very complicated
17 question to figure out what the actual impacts of climate
18 change will be.

19 There is some communities where it's easy. A
20 vernal pool that has a very small watershed and a very
21 short -- and a hydro period that's very specific. And if
22 you get less rain or earlier rain or quicker runoff or
23 less snow and hotter summers, the vernal pool is likely to
24 be in trouble. But it's not as easy to say that about
25 something like a sandplain or a clayplain or a river in

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1 floodplain forest like along the Winooski.

2 But overall I am concerned about climate
3 change and its effect on natural communities and species.

4 Q. In light of that concern, do you agree that
5 measures to reduce climate change impacts would be
6 beneficial to these natural communities?

7 A. Yes.

8 MS. LEVINE: That's all I have. Thank
9 you.

10 THE WITNESS: Sure.

11 CHAIRMAN VOLZ: Thank you.

12 MR. YOUNG: Good afternoon, Mr.
13 Sorenson.

14 THE WITNESS: Good afternoon.

15 MR. YOUNG: I wanted to ask you actually
16 sort of the flip side of a question your
17 lawyer asked someone else yesterday.

18 Are you familiar with the project as it
19 goes along Old Stage Road or the proposed as
20 it goes along Old Stage Road in Monkton?

21 THE WITNESS: In Monkton, yes.

22 MR. YOUNG: Have you seen this document
23 marked exhibit Petitioner's Surrebuttal
24 JH-1?

25 THE WITNESS: Yes, I have. I saw it
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yesterday for the first time.

MR. YOUNG: Okay. And you see the area where the proposal -- the current proposal before us is on the west side of Old Stage Road. No. Excuse me. East side of Old Stage Road. And you have an area marked here Masic, Maple, Ash, Hickory, Oak Forest; correct?

THE WITNESS: I'm sorry. That name is not very catchy.

MR. YOUNG: It didn't exactly roll off the tongue. Especially when I try to say it.

And is that -- do I presume that that's an area that has some concern for ANR, or not, or it's a large enough forested area that it's not a big issue?

THE WITNESS: I definitely have concerns about it. It is a large forest area that's -- extends way up the hill there. It's, I think, hundreds of acres. And the extent of fragmentation of that forest by constructing a pipeline along the edge of Old Stage Road isn't significant, especially with the 25 foot right of way that I think they are

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1 proposing.

2 But it is some loss of the forest as
3 proposed.

4 MR. YOUNG: Let me ask you, you see the
5 dotted blue line that's on -- now on the
6 west side of Old Stage Road which is a
7 potential route alteration.

8 Would that impact that same forest to
9 your knowledge?

10 THE WITNESS: It would not impact the
11 forest on the east side of the road. I
12 haven't assessed that long narrow strip of
13 forest that's between Old Stage Road and the
14 VELCO corridor. But the fact that it's a
15 very -- that it's a small chunk of forest,
16 that it's long and skinny, that it's already
17 fragmented by the road and the pipeline
18 means that I would prefer to see impacts to
19 that forest than to the larger one to the
20 east.

21 I think the impacts would be less if
22 they were to that small forest. It should
23 be assessed first to make sure that there is
24 nothing there.

25 MR. YOUNG: Right. I realize you
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1 haven't had a chance to assess it. But in
2 general, at first blush there is not a major
3 concern from your standpoint of switching
4 across the road.

5 THE WITNESS: No. And the opposite, I
6 think it would have less impact on the other
7 forest which is significant.

8 MR. YOUNG: I have no further questions.
9 Thank you.

10 CHAIRMAN VOLZ: Thanks. Any follow up
11 to our questions?

12 MR. PALMER: I did have one question.

13 CHAIRMAN VOLZ: Sure. Go ahead, Mr.
14 Palmer.

15 CROSS EXAMINATION

16 BY MR. PALMER:

17 Q. Good afternoon, Mr. Sorenson.

18 A. Hello.

19 Q. On the EMS-1, referring to the Clayplain
20 Forest on the Latreille property.

21 A. I'm sorry?

22 Q. On the Latreille property.

23 A. What was the reference?

24 Q. EMS-1. It's on the Rotax Road crossing.

25 A. I'm sorry. I'm not sure what EMS-1 is.
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1 MS. DILLON: If I may, I think he's
2 referring to this.

3 MR. PALMER: It's the Rotax Road
4 crossing.

5 MS. TIERNEY: Could we identify the
6 document for the record?

7 MS. DILLON: Excuse me, Mr. Palmer. I
8 think you're referring to exhibit Petitioner
9 Surrebuttal EMS-1.

10 MR. PALMER: Yes, ma'am. Sorry. I
11 shortened it.

12 CHAIRMAN VOLZ: All right. We need to
13 get the witness a copy of it. Go ahead.

14 THE WITNESS: Thank you.

15 BY MR. PALMER:

16 Q. You reference that Clayplain Forest on the
17 Latreille property south of Rotax Road?

18 A. Yes.

19 Q. My understanding is you haven't had access to
20 that at this point?

21 A. That's correct.

22 Q. The Latreille spring is to the east of that,
23 and you were talking about potentially moving that to the
24 east.

25 How does that work in order of importance,
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1 would the Clayplain Forest take preference over the
2 spring, do you know?

3 A. I wouldn't want to make that judgment. You
4 know, I haven't been out on this property to assess it.
5 And I haven't -- I really don't have any review of springs
6 or houses in my assessment.

7 Q. If they are needed via setback for the spring
8 could the pipeline be moved to the west, or would that
9 impact the clay forest more?

10 A. What we were hoping -- hoping is to keep all
11 activities in the existing field there. So that there is
12 no clearing of forest. If it -- it could come right to
13 the edge of the forest without clearing forest, that would
14 be good.

15 Q. Yeah. I think you might actually have to get
16 into that forest. I'm not sure.

17 A. Okay. It's a hard one to assess without
18 getting down and looking at it.

19 Q. I understand that. Thank you.

20 CHAIRMAN VOLZ: Just for the record, I
21 believe would it be helpful to admit exhibit
22 Petitioner -- Petitioner Exhibit Surrebuttal
23 JH-1 dated September 17, 2013. Because we
24 will be referring to it a lot.

25 MS. HAYDEN: Well just for
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1 clarification, it's not a proposed route.
2 The Petitioner is not proposing that route.
3 And I think Mr. Diamond was standing up
4 because he went through a series of cross
5 examination questions for Mr. Heintz that
6 clarified that it would -- we have got a
7 provision in the MOU with the Town of
8 Monkton that the Petitioner would advocate
9 for the route as filed.

10 Having said that, I have no --
11 Petitioner has no objection to it being
12 admitted, but we are not going to move the
13 admission of that document.

14 CHAIRMAN VOLZ: Well to make the record
15 clear it would be helpful if it were in the
16 record. Obviously just because it's in the
17 record doesn't mean that you're supporting
18 the route or that anybody is supporting the
19 route. It just makes the -- the purpose for
20 the admission would be to make the record
21 clear.

22 MR. DIAMOND: Mr. Chairman I think the
23 -- if the purpose is merely to make the
24 record clear, the Town of Monkton has no
25 objection. But to the extent it's being
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1 referred to as an alternative proposal we
2 would have an objection.

3 CHAIRMAN VOLZ: Just -- I understand
4 that you object to this alternative
5 proposal, and the company's not proposing
6 it. But it has been discussed. And we
7 would like the record to be clear.
8 Admitting this exhibit doesn't make the
9 proposal more or less of a proposal than
10 it's already been -- already is on the
11 record already.

12 MS. HAYDEN: Just to clarify. It wasn't
13 really characterized by Mr. Heintz as an
14 alternative proposal. The Petitioner was
15 asked to prepare a map that evaluated
16 potential alternatives. And I just want the
17 record to be very clear about that.

18 There still are some issues with respect
19 to that alternative that the Petitioner
20 would need to address, including the
21 landowners along that route and the Town of
22 Monkton. So it's a potential alternative
23 that's being evaluated for feasibility of
24 whether it can actually be accomplished.

25 And I know Mr. Burke is looking at me
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1 and telling me I'm mincing words, but this
2 was not a proposal.

3 MR. BURKE: I was going to mince them
4 back for a second.

5 CHAIRMAN VOLZ: We understand it's not a
6 proposal. We are admitting -- we want to
7 admit the document to make the record clear.
8 And the record includes all the discussion
9 about what goes into this map and why,
10 including Mr. Heintz's testimony, including
11 the questions about this, and so I don't see
12 what the problem is.

13 MR. BURKE: Let's take Mr. Diamond's
14 coinage then, and let us have it in the
15 record admitted as a supposal.

16 CHAIRMAN VOLZ: Except that's not a word
17 in the English language.

18 MR. BURKE: Maybe not; it's been used.
19 That will help us clarify that term.

20 MS. DILLON: Mr. Chairman, also the
21 title of the document itself, it's called
22 Reroute Constraints. It appears that the
23 purpose of the document is to identify
24 constraints, not necessarily to identify the
25 chosen alternative by Vermont Gas.

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1 So I think the record is clear regarding
2 what its use has been, and I think Vermont
3 Gas has been clear, and certainly the Town
4 of Monkton has been clear regarding the
5 reservations about the potential reroute.

6 MS. HAYDEN: It's actually titled
7 Potential Reroutes. I think Ms. Dillon is
8 referring to the wrong one.

9 With the clarifications, Vermont Gas --
10 we would move the admission of what Vermont
11 Gas witness Heintz had prepared and
12 testified to yesterday which is exhibit
13 Petitioner Surrebuttal JH-1.

14 CHAIRMAN VOLZ: Dated September 17,
15 2013.

16 MS. HAYDEN: Correct.

17 CHAIRMAN VOLZ: Okay. Then you're
18 objecting to that, Mr. Diamond?

19 MR. DIAMOND: I am standing by our
20 objection.

21 CHAIRMAN VOLZ: Objection is overruled.
22 We are going to let it in under Rule 1006 of
23 the Rules of Evidence which allows for
24 summaries to be admitted. This is in
25 essence a summary of all the testimony
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1 related to --

2 MS. HAYDEN: A potential reroute.

3 CHAIRMAN VOLZ: -- a potential reroute.

4 Which no one is proposing.

5 MS. HAYDEN: Correct.

6 CHAIRMAN VOLZ: Thank you.

7 MR. BURKE: Supposal.

8 (Exhibit Petitioner Surrebuttal JH-1 was
9 admitted into the record.)

10 CHAIRMAN VOLZ: Did you have redirect,
11 by the way? I didn't mean to skip over
12 that.

13 MS. DILLON: I don't.

14 CHAIRMAN VOLZ: Thank you, Mr. Sorenson.
15 You're excused.

16 THE WITNESS: Thank you.

17 CHAIRMAN VOLZ: I think we are ready for
18 Mr. Brunner.

19

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21

22

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25

1 KEITH BRUNNER

2 Having been duly sworn, testified
3 as follows:

4 MR. COEN: Please state your name for
5 the record.

6 THE WITNESS: Keith Brunner.

7 MR. COEN: Do you want to spell the last
8 name please?

9 THE WITNESS: B-R-U-N-N-E-R.

10 MR. COEN: Thank you.

11 MR. PALMER: And this is my witness, Mr.
12 Brunner, and he is ready.

13 CHAIRMAN VOLZ: Mr. Brunner, you
14 prepared testimony in this case; is that
15 correct?

16 THE WITNESS: I did.

17 CHAIRMAN VOLZ: And was it filed dated
18 June 13?

19 THE WITNESS: It was.

20 CHAIRMAN VOLZ: And is it true and
21 accurate to the best of your knowledge?

22 THE WITNESS: Yes.

23 CHAIRMAN VOLZ: Okay. Is there any
24 objection to admitting the testimony of Mr.
25 Brunner?

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1 MS. HAYDEN: No objection.

2 CHAIRMAN VOLZ: It's admitted.

3 (The Prefiled Testimony of Keith Brunner
4 was admitted into the record.)
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1 CHAIRMAN VOLZ: And I think we are the
2 only ones who had questions for him. That
3 would be Ms. Tierney.

4 MS. TIERNEY: So people can hear me.
5 Yes. Good afternoon, Mr. Brunner.

6 I noticed in your testimony that you
7 described yourself as someone who holds an
8 undergraduate degree in environmental
9 studies from University of Vermont, and that
10 you did a thesis on climate change and
11 complex systems.

12 I'm going to confess to you, frankly,
13 that I'm very, very superficially
14 knowledgeable about what a complex system is
15 in your discipline. If you could tell me
16 what that is, it would be helpful.

17 THE WITNESS: A complex system is
18 understanding that when systems operate they
19 don't only operate linearly and that there
20 is multiple feedbacks that happen. And then
21 also that systems are path dependent, and so
22 when you have an economic system, for
23 example, and you make one decision, for
24 example, to build some type of
25 infrastructure, you're sort of locked into
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1 that.

2 And it also forecloses other options.
3 And so that's sort of -- that's part of like
4 a definition of a complex system.

5 MS. TIERNEY: Okay. That's very
6 helpful. I'm curious to know, I saw with
7 interest that you were an International
8 Youth Delegate at the United Nations
9 Framework Convention on Climate Change.
10 Before I ask this question, is there a
11 convenient way for us to refer to the U.N.
12 Framework?

13 THE WITNESS: A lot of folks call it the
14 U-N-F triple C.

15 MS. TIERNEY: The UNF Triple C. Okay.
16 How did you become a Youth Delegate to the
17 UNF Triple C?

18 THE WITNESS: There is a national
19 organization called Sustain Us that you can
20 apply to. And then there are also what are
21 called NGOS, environmental NGOs, that you
22 can have accreditation through. So my route
23 was accreditation through an environmental
24 NGO that I contacted after graduating, and
25 then participated in what's called Youngo,
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1 it's the official youth constituency at the
2 UNF Triple C, as a representative from the
3 United States in that process.

4 MS. TIERNEY: Okay. And I'm sure you
5 know this line from years of drama and
6 watching television. For the record, what
7 is an NGO?

8 THE WITNESS: Non governmental
9 organization.

10 MS. TIERNEY: Thank you. Okay. I also
11 notice the reference in your testimony to
12 stakeholders who participated in the UNF
13 Triple C. And I'm curious to know could you
14 describe roughly the community of
15 stakeholders who participated in meeting 15
16 and 16, where I think you were an observer,
17 right?

18 THE WITNESS: Yes. I was at 16 and 17
19 in Cancun and in Durban, South Africa.

20 MS. TIERNEY: It was 16 and 17 not 15
21 and 16.

22 THE WITNESS: Yeah. And so they all
23 have fancy names like BINGOs and INGOs and
24 NGOs, but it's environmental non
25 governmental organizations have one
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1 constituency voice. Youth organizations
2 have another. Business organizations have
3 one. Indigenous peoples have one, and then
4 I believe labor has one. And I'm probably
5 missing it.

6 And so it's the responsibility of
7 organizations which fall under those -- in
8 those categories to come together and sort
9 of forge common proposals and platforms.

10 MS. TIERNEY: Okay. And you've entered
11 a forum that is governed by rules and laws
12 and limitations. In that arena, who has the
13 power of deciding what are the rules and the
14 laws and the like? Who has the power of
15 deciding who is going to be considered a
16 stakeholder?

17 THE WITNESS: I believe the United
18 Nations does. In particular the United
19 Nations Framework Convention on Climate
20 Change sort of structure.

21 MS. TIERNEY: Okay. At either meeting
22 16 or 17, was there a resolution adopted
23 that required or supported a complete ban on
24 the development of new gas pipeline
25 infrastructure?

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1 THE WITNESS: No.

2 MS. TIERNEY: Okay. Now going to your
3 testimony, do you have a copy of that with
4 you?

5 THE WITNESS: I do.

6 MS. TIERNEY: If you could turn to page
7 three of it. Toward the bottom you testify
8 that all decisions related to Entergy,
9 energy, I'm sorry.

10 MR. COEN: Last case.

11 MS. TIERNEY: Somebody give me my pills
12 please. Let me start again. Let me
13 apologize to you for editing your testimony.

14 You state that quote: All decisions
15 related to energy, land use, food systems,
16 et cetera, must be set within a framework of
17 transitioning away from the era of fossil
18 fuels and extreme energy and towards
19 community based and locally controlled
20 systems.

21 Do you see that in your testimony?

22 THE WITNESS: I do.

23 MS. TIERNEY: Now Mr. Palmer explained
24 that he asked you to testify because he
25 found your testimony eloquent and
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1 passionate. And I think you were eloquent
2 and passionate on that point that I just
3 read. So I was surprised that you did not
4 testify that these decisions should be made
5 within a framework of immediate conversion
6 to community based and locally controlled
7 systems. Why is that?

8 THE WITNESS: I think that -- I think
9 it's important to recognize the speed at
10 which our decision-making processes work,
11 especially in a democratic process. And so
12 it's a process of taking steps towards. And
13 --

14 MS. TIERNEY: That would be in the
15 nature of transitioning, right?

16 THE WITNESS: Yeah.

17 MS. TIERNEY: It's literally transitivus
18 from the Latin to go, to take steps.

19 THE WITNESS: Yes.

20 MS. TIERNEY: That makes a lot of sense.
21 Was there anything you wanted to add to that
22 answer as to why you didn't call for
23 immediate conversion?

24 THE WITNESS: No.

25 MS. TIERNEY: Okay, fair enough. Now
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1 dropping a little further down in your
2 testimony you say in roughly the third
3 paragraph on that page, quote; resolving the
4 climate crisis requires an immediate ban on
5 all fossil fuel infrastructure expansion.
6 Do you recall that testimony? And if you
7 don't, just take your time and catch up to
8 it. It's in the third paragraph on page
9 three.

10 THE WITNESS: I see that.

11 MS. TIERNEY: Okay. If you could, is it
12 your understanding that this Board has the
13 legal power to make a policy decision of
14 that magnitude?

15 THE WITNESS: It is not. It's my
16 understanding that the Board makes decisions
17 in line with the public good. And I think
18 that's where I was coming from with this is
19 recognizing that science is telling us one
20 thing, that is also in line with, and it
21 could be argued a moral and ethical
22 dimension saying that the public good
23 requires certain steps.

24 And so it wouldn't be in the purview of
25 the Public Service Board to ban fossil fuel
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1 expansion, but it would be in the purview of
2 the Public Service Board to make decisions
3 in line with the public good.

4 MS. TIERNEY: With the public good. Now
5 to your way of thinking is there a
6 distinction to be drawn between the public
7 good and the general good of the state?

8 THE WITNESS: Well I think there is a
9 separation between the state and the people
10 who live here.

11 MS. TIERNEY: Yes.

12 THE WITNESS: And I think that --

13 MS. TIERNEY: How would you describe
14 that separation?

15 THE WITNESS: The state is sort of a
16 like bureaucratic apparatus. Whereas the
17 people who live here are just humans that
18 live on the landscape in the state, is one
19 form of decision making that we use.

20 MS. TIERNEY: I'm going to parry with
21 you a little bit. And I don't mean to be
22 disrespectful in any way. But you would
23 concede that those people who just happen to
24 live here, they vote; and that apparatus you
25 were describing is within their control at
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1 the ballot box; would you not?

2 THE WITNESS: Yes.

3 MS. TIERNEY: Okay. Fair enough.

4 That's all the parrying I'm going to do.

5 CHAIRMAN VOLZ: If you're moving on to
6 another --

7 MS. TIERNEY: I was about to, but if you
8 like.

9 CHAIRMAN VOLZ: On the public good
10 issue, you're aware that the petition that's
11 before us is being reviewed under Section
12 248 of Title 30.

13 Are you familiar with that at all?

14 THE WITNESS: Yes.

15 CHAIRMAN VOLZ: And the public good is
16 defined in there, and there is a list of
17 criteria that have to be met. And so our
18 decision really is the process of going
19 through those criteria, which is why when
20 you were sitting here earlier, Mr. Sorenson
21 was being questioned about how it is that
22 certain of his decisions he made related to
23 impacts on the natural environment, met
24 those criteria or didn't meet those
25 criteria.

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1 And so you are aware of all of that?

2 THE WITNESS: Yes.

3 CHAIRMAN VOLZ: Okay. And that we don't
4 have the freedom to just define the public
5 good in some big picture, general way that
6 maybe people would like us to.

7 THE WITNESS: Yes.

8 CHAIRMAN VOLZ: Okay. Thank you.

9 MS. TIERNEY: Are you good to go?

10 CHAIRMAN VOLZ: Yes.

11 MS. TIERNEY: Okay. Now at the top of
12 your testimony on page four you say
13 constructing a fracked gas pipeline locks
14 our communities into decades more dependence
15 on fossil fuels. I was struck by your use
16 of the word locks. So I wanted to
17 understand what you mean by that precisely.

18 THE WITNESS: Yeah. I think it has to
19 do with recognizing that when there is large
20 amounts of capital invested in a project it
21 makes things -- it sort of forecloses other
22 options. It means that there is a lot of
23 inertia behind one particular path forward,
24 and it means it's that much more difficult
25 to take a different path.

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1 And when we are in the context of the
2 way in which our communities are powered,
3 and in particular like how we are heating
4 our homes and how our businesses are running
5 on energy, this decision has a big
6 implication for as long as this
7 infrastructure is in the ground, or as long
8 as the company's continuing to have gas flow
9 through it.

10 MS. TIERNEY: Okay. And now I noticed
11 in that answer you used the word or the
12 phrase, I think you said a large
13 implication. Or maybe a huge implication,
14 I'm not sure.

15 Now the pipeline may have a huge
16 implication, but would you agree with me
17 that that is yet different from a locking
18 implication? Because to me lock implies
19 that you ain't going anywhere, you ain't
20 doing nothing, you be fixed; is that your
21 understanding of locks too?

22 THE WITNESS: Yes.

23 MS. TIERNEY: Okay. So at the outset
24 your answer also started with the premise
25 that the company is investing a huge amount
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1 of capital or a large amount of capital. So
2 what if the pipeline exists, and in fairly
3 rapid order by the grace of your
4 considerable advocacy it becomes clear that
5 it's not productive. It's not -- that there
6 are serious capital-implied down sides to
7 using this pipeline.

8 Do you not think that at that point
9 folks would opt for something other than
10 natural gas by way of powering their needs?

11 THE WITNESS: Yes, I think that could
12 happen.

13 MS. TIERNEY: Okay. Fair enough. Now
14 again, I'm going to parry with you a little
15 bit with the upmost respect. On page four,
16 I took this very personally. You testified
17 that from the perspective of young and
18 future generations there is no question
19 about it; fossil fuel infrastructure
20 expansion like the ANGP is about as far as
21 you can get from the public good.

22 Now young man, this is going to be
23 difficult for you. Who counts as young?

24 THE WITNESS: It's a very --

25 MR. BURKE: Not you.
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1 THE WITNESS: It's a very good question.
2 I believe at the -- through the Youngo, the
3 --

4 MS. TIERNEY: There is a definition; is
5 that right?

6 THE WITNESS: I think it's around the
7 mid 20's, which I am smack dab in the middle
8 of.

9 MS. TIERNEY: Oh, Mr. Brunner, there was
10 a time, and I misspent all of my youth here.
11 So I'm not among the young, and you're not
12 speaking for me; is that right?

13 THE WITNESS: You might be young at
14 heart.

15 MR. BURKE: Nice try. Very good.

16 (Laughter.)

17 MS. TIERNEY: So you might concede there
18 are shades of gray when it comes to these
19 important definition of words; right?

20 THE WITNESS: Certainly.

21 MS. TIERNEY: Fair enough. Again, now
22 with respect to you, is it your testimony
23 that the only perspective the Board should
24 consider in assessing the public good
25 question under Section 248, which the
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1 Chairman alluded to earlier, is the
2 perspective of young and future generations,
3 keeping in mind that you're talking to me,
4 who is not young.

5 THE WITNESS: Yeah. Well I think as was
6 explained, the Board has particular criteria
7 for determining the public good. And my
8 understanding is that that's set. And so
9 part of my -- and I recognize that I come in
10 with a very strong -- this was a very strong
11 testimony saying like -- recommending that
12 this does not happen.

13 And that comes from feeling like there
14 is a need for this voice. Especially a lot
15 of young people talk about the idea of
16 inter-generational justice and the fact that
17 perhaps young people are the best suited to
18 be voices and sort of ombudspeople for the
19 generations who might come after us. And
20 right now we have -- I guess they say like
21 point eight degrees of celsius warming has
22 already happened, and there is already
23 massive droughts and wild fires and all
24 these things.

25 The International Energy Agency says we
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1 need to keep like 80 percent of the
2 remaining coal, oil and gas underground if
3 we are going to have an 80 percent chance of
4 meeting like a three degree celsius warming
5 threshold.

6 Beyond that it's seen as this
7 catastrophic climate disaster. So if we are
8 going to be accountable to future
9 generations, that requires us to leave the
10 vast remaining fossil fuels in the ground.

11 And so from my perspective of thinking
12 as a young person, and also thinking about
13 people who will come after us, sort of
14 sticking another straw into the pot is not a
15 way to leave it in the ground. It's going
16 to facilitate more of it coming out and
17 being combusted.

18 MS. TIERNEY: Understood. I think that
19 was the gist of your testimony and that came
20 through very clearly.

21 I asked you a slightly different
22 question, so let me try again.

23 THE WITNESS: Sure.

24 MS. TIERNEY: Do you think that the
25 perspective of the young and future
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1 generations is the only legitimate
2 perspective for the Board to consider in
3 assessing this petition?

4 THE WITNESS: No.

5 MS. TIERNEY: Fair enough. I think
6 that's all I have. We typically ask our
7 witnesses here who have appeared for non --
8 or pro se people we say, people who aren't
9 represented by counsel, whether they had
10 anything else they wanted to add to that --
11 their testimony.

12 Was there anything else you wanted to
13 add to yours, or have you given us the
14 nutshell?

15 THE WITNESS: I think that's it.

16 MS. TIERNEY: Thank you for your time,
17 Mr. Brunner. I'm done, Mr. Chairman.

18 CHAIRMAN VOLZ: Thank you. Any follow
19 up to our questions? Yes.

20 MS. LEVINE: I have one follow up.

21 CHAIRMAN VOLZ: Ms. Levine.

22 CROSS EXAMINATION

23 BY MS. LEVINE:

24 Q. Good afternoon, Mr. Brunner.

25 A. Good afternoon.

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1 Q. Do you recall your response or discussion you
2 had with the Board concerning public good and the meeting
3 of the public good and the Board's authority?

4 A. Yes.

5 Q. Do you have that in mind? Is it fair to say
6 that your testimony regarding the public good is provided
7 in the context of greenhouse gas emissions and climate
8 change which are the impacts of this project?

9 A. Yes.

10 MS. LEVINE: That's all I have. Thank
11 you.

12 THE WITNESS: Okay.

13 CHAIRMAN VOLZ: Thanks.

14 THE WITNESS: Thanks.

15 CHAIRMAN VOLZ: Okay. Thank you.

16 MS. HAYDEN: Hello. Kim Hayden. I just
17 had one question.

18 CROSS EXAMINATION

19 BY MS. HAYDEN:

20 Q. When you were talking about inter-generational
21 justice, it made me think about the public hearing the
22 other night, and I know I saw you there. I think you
23 spoke. But you were there with some other women that were
24 with you that made some comments to the Board. And one
25 that just stuck in my mind was a comment that even if you

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1 issue a 248, this project will not be built. Do you
2 remember that?

3 A. I do.

4 Q. Do you happen to know what that was -- you
5 know what they were actually implying by that statement?

6 A. Yes. I believe that the person was
7 potentially referring to a moral authority. And that was
8 the context of the -- of her comment.

9 Q. But so a moral authority would be the context,
10 but how would the project not be built if it received a
11 permit?

12 A. I'm not sure I can answer that.

13 Q. Okay.

14 MR. BURKE: Let me ask it to you this
15 way. Do you in your studies -- have you run
16 across the differential and the concept of
17 positive law versus natural law?

18 THE WITNESS: Vaguely.

19 MR. BURKE: Positive law is the written
20 word and what the law requires. And that
21 natural law is a law that says there is a
22 spirit to it and may require more than that.
23 Is that the differential you're trying to
24 get at here?

25 THE WITNESS: Yes.
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1 MR. BURKE: Thank you.

2 CHAIRMAN VOLZ: Okay. Is there any
3 redirect for this witness?

4 MS. PALMER: Pee break. I don't think
5 so.

6 (Laughter.)

7 CHAIRMAN VOLZ: Okay. Good. Thank you.
8 You're excused then, Mr. Brunner. Thank you
9 for coming.

10 THE WITNESS: Thank you.

11 CHAIRMAN VOLZ: Okay. I think we have
12 run out of witnesses; is that correct? At
13 least for today.

14 MR. BURKE: Mr. Lind?

15 CHAIRMAN VOLZ: Do you want to do --

16 MR. SCIARROTTA: Tomorrow.

17 (A discussion was held off the record.)

18 CHAIRMAN VOLZ: We are done with the
19 record.

20 (Whereupon, the proceeding was
21 adjourned at 3 p.m.)
22
23
24
25

C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Technical Hearing re: Docket Number 7970 at the Montpelier Room, Capitol Plaza Hotel, 100 State Street, Montpelier, Vermont, on September 18, 2013, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 220 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 20th day of September, 2013.

Kim U. Sears, RPR

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